ARKANSAS SUPREME COURT

No. 05-135

NOT DESIGNATED FOR PUBLICATION	**Opinion Delivered** **June 29, 2006**
BUFFORD McDONALD Appellant	*PRO SE* APPEAL FROM THE CIRCUIT COURT OF IZARD COUNTY, CV 2004-50-4, HON. TIMOTHY M. WEAVER, JUDGE
v.	
LARRY NORRIS AND BROOKS PARKS Appellees	AFFIRMED

PER CURIAM

Appellant Bufford McDonald is an inmate incarcerated in the Arkansas Department of Correction. He filed a *pro se* petition for writ of *habeas corpus* in the county where he was and is presently incarcerated, requesting the court to serve Larry Norris, Director of the Arkansas Department of Correction, and others, with the writ.[1] Appellant now brings this appeal of an order entered in Izard County Circuit Court denying that petition.

An amended judgment and commitment order entered in Pope County Circuit Court December 8, 1999, as attached to the petition, reflects that appellant entered a plea of *nolo contendere* to rape and was sentenced to 240 months' imprisonment. In his petition, appellant requested *habeas* relief because he asserted the trial court lost jurisdiction due to violation of the

[1] Appellant first named Sara McQuilliams as a party. Ms. McQuilliams was removed by order of the circuit court, and Brooks Parks, who assumed the position of warden of the North Central Unit of the Arkansas Department of Correction following Ms. McQuilliams, was substituted as a party.

speedy trial requirements under our Rules of Criminal Procedure, and because he claimed the judgment was invalid as a result of a number of deficiencies. Those alleged deficiencies listed by appellant were: (1) the same speedy-trial violation; (2) his claim that his plea was not voluntary; (3) Pope, Arkansas, rather that Pope County, Arkansas, being listed as the designated circuit court; (4) two alternate birth dates in the information describing the defendant; (5) the judgment indicating the defendant waived counsel and represented himself, as well as indicating the defendant was represented by a public defender as counsel; (6) the fact as alleged by appellant that habitual enhancement was never waived or dismissed; (7) a notation that two additional counts were dismissed without prejudice; (8) the original judgment entered prior to the amended judgment not reflecting that his plea was *nolo contendere*; (9) two dates being entered for the date of the offense; (10) an allegedly invalid signature appellant claimed resulted from a reference to a short report that was not attached as indicated above the signature, and the failure to include a departure report; (11) alleged deficiencies in what appears as the circuit clerk's certification on the judgment; (12) no additional hearing being conducted in conjunction with the amendment of the judgment; (13) a number of perceived deficiencies in the plea proceedings; (14) appellant's claim of actual innocence.

In addition to the amended judgment and two previous judgments entered on December 1, 1999, appellant had attached to the petition a number of documents in support. These were copies of two informations, what appears to be a copy of the transcript from appellant's plea proceedings with numerous handwritten notations in the margins, letters from the office of the lieutenant governor and a state senator, each suggesting appellant should contact other parties for the assistance he was requesting, and some documents concerning a complaint by appellant about the psychiatric examination he had received, the investigation by the Arkansas Board of Examiners in Psychology

and a consent order that resulted. Appellant contends that the trial court erred in denying his petition based upon his petition and the pleadings.[2]

It is well settled that the burden is on the petitioner in a *habeas corpus* petition 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*, ___ Ark. ___, ___S.W.3d ___ (February 2, 2006) (*per curiam*). The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a "showing, by affidavit or other evidence, [of] probable cause to believe" he is illegally detained. Ark. Code Ann. 16-112-103 (1987). *See Wallace v. Willock*, 301 Ark. 69, 781 S.W.2d 478 (1989). None of the claims in appellant's petition was sufficient to demonstrate grounds for a writ of *habeas corpus* to issue.

While appellant attempts to couch his claims as defects that result in an invalid judgment or a lack of jurisdiction, the bases for the majority of those claims are clearly issues that should have been raised on appeal or in a petition under Ark. R. Crim. P. 37.1, and are not such as to be cognizable in a *habeas* proceeding. Appellant first categorizes his speedy-trial claim as a jurisdictional issue. However, if the claim was not raised prior to his conviction, appellant waived the claim by entering his plea. *See Hall v. State*, 281 Ark. 282, 663 S.W.2d 926 (1984); Ark. R. Crim. P. 30.2. If raised, then the claim was one that must be addressed on direct appeal or through a proceeding under Ark. R. Crim. P. 37.1, not in a *habeas* proceeding. A *habeas corpus* proceeding does not afford a prisoner an opportunity to retry his case, and is not a substitute for direct appeal

[2] We note that appellant criticizes the circuit court for what he perceived as reluctance to grant a hearing on his petition. However, a hearing is not required if the petition does not allege either of the bases of relief proper in a *habeas* proceeding. *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991).

or postconviction relief. *Meny v. Norris*, 340 Ark. 418, 13 S.W.3d 143 (2000).

If it were not clear that a speedy-trial violation is not apparent on the face of the judgment, the same analysis disposes of appellant's claim that this alleged defect causes the commitment to be invalid on its face. Appellant's claims concerning the voluntary nature of his plea and the plea proceedings are similarly of the precise type that should be limited to relief pursuant to a timely petition for postconviction relief under Ark. R. Crim. P. 37.1. Allegations of an involuntary plea or improper plea procedures do not raise a question of a void or illegal sentence such as may be addressed in a *habeas corpus* proceeding. *See Friend v. Norris*, ___ Ark. ___, ___ S.W.3d ___ (December 1, 2005) (*per curiam*). Appellant's claims here pose the type of questions that require the kind of factual inquiry that goes well beyond the facial validity of the commitment and are therefore evaluated in a postconviction proceeding under Rule 37.1.

As for the remainder of appellant's claims of defects on the face of the commitment, he fails to develop any argument.[3] The State asserts that these remaining alleged defects are mere clerical error that should not void the judgment.[4] Some of the alleged defects, such as the omission of "county" from the designation of the court and references to reports that were not attached, clearly

[3] Appellant attempts in his brief to assert as an additional independent claim a conclusory assertion of actual innocence that he argues should have defeated the trial court's jurisdiction, in addition to rendering the commitment invalid. Appellant acknowledges that this type of claim is not typically cognizable in a petition for writ of *habeas corpus*. This type of claim is clearly not cognizable, as it is merely a challenge to the sufficiency of the evidence. Sufficiency of the evidence is an issue that is best addressed on appeal.

[4] Appellant faults the State for failing to sign or verify its brief. He refers to no requirement for verification of the brief, and we note that the State did indeed provide a signed letter as evidence of service in accord with Ark. Sup. Ct. R. 4-4(d).

are.[5] Clerical error of the type that may be corrected by a *nunc pro tunc* order does not entitle appellant to a writ of *habeas corpus*.[6] *See Fullerton v. McCord*, 339 Ark. 45, 2 S.W.3d 775 (1999). Some of these claims, if more than mere clerical error, would raise, once again, the type of question that goes beyond the facial validity of the commitment.[7] But, in any case, it is not obvious to us, and appellant has not explained, how these alleged defects would invalidate the judgment or make a showing of probable cause that he is illegally detained. He neither cites authority to indicate that such an error would result in a void judgment, nor offers persuasive argument on these points. We do not research or develop arguments for appellants. *Hester v. State*, ___ Ark. ___, ___ S.W.3d ___ (May 19, 2005). Nor will this court consider an argument that presents no citation to authority or convincing argument. *Kelly v. State*, 350 Ark. 238, 85 S.W.3d 893 (2002).

Affirmed.

---

[5] Appellant's assertion that the signature was valid only as to the unattached reports is not supported, as he appears to contend, by the text of the judgment.

[6] Any alleged error in the type of plea entered in the original judgments would have been cured by the entry of the amended judgment as a *nunc pro tunc* order.

[7] For example, appellant's claim that the commitment was invalid because it indicated both that he was represented by a public defender and that he represented himself and waived counsel. If there was not merely a clerical error here because the judgment did not clearly reflect that appellant was first represented by counsel, and then dismissed counsel to represent himself, the issue of appropriate representation was not one that could be resolved on the record before the circuit court, and was almost certainly of the type to be resolved on appeal or in a Rule 37.1 proceeding.