

# ARKANSAS SUPREME COURT

No. 08-344

STEWART TAYLOR  
Appellant

v.

LARRY NORRIS, DIRECTOR,  
ARKANSAS DEPARTMENT OF  
CORRECTION  
Appellee

## Opinion Delivered

PRO SE MOTION FOR DUPLICATION  
OF BRIEF AT PUBLIC EXPENSE  
[CIRCUIT COURT OF JEFFERSON  
COUNTY, CV 2007-996, HON.  
ROBERT H. WYATT, JR., JUDGE]

APPEAL DISMISSED; MOTION  
MOOT.

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## PER CURIAM

In 2004, appellant Stewart Taylor entered a plea of nolo contendere to possession of print medium depicting sexually explicitly conduct involving a minor child and to a subsequent offense of the same charge. On each charge, appellant was sentenced to seventy-two months' imprisonment and forty-eight months' suspended imposition of sentence in addition to payment of fines and fees. The State also agreed to a nolle prosequi of the remaining seven charges of the same offense filed against him.

In 2007, appellant, who was incarcerated by the Arkansas Department of Correction in Jefferson County, filed a pro se petition for writ of habeas corpus in the circuit court in that county. The circuit court dismissed the petition without a hearing and appellant has lodged a pro se appeal here from the order.

Now before us is appellant's pro se motion for duplication of his brief-in-chief at public expense. As appellant could not be successful on appeal, the appeal is dismissed and the motion is

moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Lukach v. State*, 369 Ark. 475, \_\_\_ S.W.3d \_\_\_ (2007) (per curiam).

Appellant's petition filed in the circuit court centered around his claim of actual innocence and that his conviction was invalid. The petition contained a litany of alleged errors and unconstitutional acts committed in the course of a conspiracy between the prosecutor, the trial judge and trial counsel.<sup>1</sup> In addition, he claimed that an unknown third-party internet hacker planted internet pornography on his computer as evidence to convict him for possession of that pornography. In the petition, appellant sought an evidentiary hearing and the issuance of a subpoena duces tecum to produce all suppressed exculpatory evidence and documents missing from his court case file. He also prayed for dismissal of the judgment.

Unless a petitioner 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. *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). The petitioner must plead either facial invalidity or lack of jurisdiction 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) (Repl. 2006); *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991).

In the instant matter, appellant's entire argument is not cognizable in a habeas petition. A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case and is not a

<sup>1</sup>Appellant alleged constitutional and civil rights violations, ineffective assistance of counsel, judicial and prosecutorial misconduct and bias, suppression of exculpatory evidence, illegal tampering with evidence and his court case file, a broken chain of custody of evidence used in his trial, being prevented from discovering new exculpatory evidence, a warrantless search and seizure, the above-mentioned conspiracy, perjured testimony being given by witnesses and being forced to enter into a plea agreement.

substitute for direct appeal or a timely petition for postconviction relief. *Meny v. Norris*, 340 Ark. 418, 13 S.W.3d 143 (2000) (per curiam). In his petition, appellant was clearly rearguing his case and contending that he was innocent of the charges filed against him. He was also making arguments that would have been proper in a timely postconviction petition. None of the allegations contained in appellant's petition raised a question of a void or illegal sentence such as may be addressed in a habeas corpus proceeding.

Appeal dismissed; motion moot.