

ARKANSAS SUPREME COURT

No. 08-368

TERRANCE BULLOCK
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 15, 2008

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE APPELLANT'S
BRIEF [CIRCUIT COURT OF LEE
COUNTY, CV 2007-113, HON.
HARVEY L. YATES, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

On August 20, 2007, appellant Terrance Bullock, a prisoner incarcerated in the Arkansas Department of Correction, filed a pro se petition for writ of habeas corpus in Lee County Circuit Court. The circuit court dismissed the petition by order entered January 8, 2008. Appellant has lodged an appeal of that order in this court and now brings this pro se motion for extension of time in which to file his brief. We dismiss the appeal and appellant's motion is therefore moot.

An appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of habeas corpus, 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). Here, it is clear that appellant cannot prevail because his petition failed to state grounds upon which the writ could issue.

In his petition, appellant alleged that his sentence was illegal and the trial court that convicted him lacked jurisdiction because, when it accepted his guilty plea, the court did not indicate

his sentence was subject to enhancement under Ark. Code Ann. § 16-93-609(b)(1) (Repl. 2006), or advise him that he would be required to serve his entire sentence. This type of challenge to a guilty plea is not one cognizable in a proceeding for a writ of habeas corpus.

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*, 365 Ark. 219, 226 S.W.3d 797 (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. *Id.* at 221, 226 S.W.3d at 798-799. A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case, and is not a substitute for postconviction relief. *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam).

Appellant's claims in his petition require the kind of factual inquiry that is beyond the scope of a habeas proceeding. He alleged that the court did not comply with Ark. R. Crim. P. 24.4, that the court should not have accepted his plea, and that the court would have imposed a lesser sentence if aware section 16-93-609(b)(1) was applicable. This is the type of claim limited to relief under Ark. R. Crim. P. 37.1, not one that raises a question of a void sentence to be addressed through a habeas corpus proceeding. *See Friend*, 364 Ark. at 317, 219 S.W.3d at 125. Because appellant's petition did not state a claim that would support issuance of the writ, he cannot prevail on appeal of the order dismissing his petition. Because we dismiss the appeal, his motion is therefore moot.

Appeal dismissed; motion moot.