

ARKANSAS SUPREME COURT

No. 08-465

REGINALD EARLY
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

Opinion Delivered

PRO SE MOTION TO FILE AN
ENLARGED BRIEF AND MOTION
FOR DUPLICATION AT PUBLIC
EXPENSE [CIRCUIT COURT OF
JEFFERSON COUNTY, CV 2007-1134,
HON. ROBERT H. WYATT, JR.,
JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

In 1992, appellant Reginald Early was found guilty by a jury of aggravated robbery and first-degree murder. He was sentenced to life imprisonment on each charge. We affirmed. *Early v. State*, 315 Ark. 466, 869 S.W.2d 9 (1994).

In 2007, appellant, who was incarcerated 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 are appellant's pro se motions to file an enlarged brief and for duplication of the brief at public expense. After filing the motion for an enlarged brief, appellant tendered to the court a brief that did not contain an over-length argument, making the motion for an enlarged brief moot. Moreover, as appellant could not be successful on appeal, the appeal is dismissed and the motion for duplication at public expense is also 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 contained five arguments: (1) that appellant was subjected to double jeopardy by being convicted of both first-degree murder and aggravated robbery; (2) that the trial court lacked subject-matter jurisdiction over the first-degree murder charge, thereby voiding the conviction and making the sentence illegal; (3) that the trial court lacked subject-matter jurisdiction over accomplice liability, thereby voiding the convictions for both charges and making the sentences illegal; (4) that a jurisdictional question remained as it was unclear whether appellant was convicted of first-degree felony murder or first-degree premeditated and deliberated murder; (5) that a jurisdictional question remained as it was unclear whether appellant was convicted as an accomplice to first-degree murder or aggravated robbery. Appellant sought an evidentiary hearing and for the court to issue findings of facts to resolve the last two issues.

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). However, a habeas corpus proceeding does not afford a prisoner an opportunity to retry his case and is not a 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 the instant matter, appellant's first argument concerns a claim of double jeopardy. Such

claims do not raise a question of jurisdiction for purposes of habeas corpus relief. *Johnson v. State*, 298 Ark. 479, 769 S.W.2d 3 (1989).

Appellant's second and third arguments challenge the trial court's subject-matter jurisdiction over murder charges and criminal accomplice liability. However, the circuit court unquestionably had subject-matter jurisdiction to hear a felony criminal case as well as a charge involving criminal accomplice liability. *E.g.*, *Smith v. Fox*, 358 Ark. 388, 193 S.W.3d 238 (2004); *Williams v. State*, 346 Ark. 304, 57 S.W.3d 706 (2001).

The last two arguments made by appellant in support of a habeas petition allegedly raised jurisdictional questions and sought an evidentiary hearing to clarify appellant's convictions. The questions posed were not jurisdictional questions. Instead, as described in appellant's own request for relief, the issues required the kind of factual inquiry that would go well beyond the facial validity of the commitment. *See Friend, supra*. 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; motions moot.