

ARKANSAS SUPREME COURT

No. 08-77

RANDALL T. McARTY

Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

Appellee

Opinion Delivered

PRO SE APPEAL FROM THE
CIRCUIT COURT OF JEFFERSON
COUNTY, CV 2007-876, HON.
ROBERT H. WYATT, JR., JUDGE

AFFIRMED.

PER CURIAM

Appellant Randall T. McArty, an inmate who was convicted of first-degree murder and sentenced to life imprisonment in the Arkansas Department of Correction, filed a pro se petition for writ of habeas corpus in Jefferson County Circuit Court. The circuit court dismissed the petition and appellant brings this appeal of that order.

The order dismissing the petition found that the allegations in the petition did not demonstrate a lack of jurisdiction or that the commitment was invalid on its face, and that the petition did not state facts to support the claims. The petition alleged that the trial court lacked jurisdiction to convict appellant because he was not competent for trial, that he had a low IQ and had been taking prescribed medication. In conjunction with that argument, appellant alleged that the prosecution had withheld certain evidence concerning the time of the victim's death, and, if that evidence had been available, it would have caused the court to conduct an investigation as to appellant's competency that would have determined that appellant was not competent when he testified.

We do not reverse a trial court's decision granting or denying postconviction relief unless

it is clearly erroneous. *Johnson v. State*, 356 Ark. 534, 157 S.W.3d 151 (2004). A finding 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 committed. *McKinnon v. Norris*, 366 Ark. 404, 231 S.W.3d 725 (2006) (per curiam).

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.

On appeal, appellant groups his arguments into what he lists as three "grounds" for reversal. In the first point, he restates his allegations from the petition, asserting that competency does not go to his guilt or innocence and is a question of sentencing or a question of subject-matter jurisdiction. In his second point, appellant again argues that the judge's ability to evaluate his testimony at trial was hampered by the allegedly withheld evidence. In his third point, appellant complains that the Jefferson County Circuit Court failed to provide a hearing so that appellant could develop his argument as to competency to stand for trial, and failed to order an evaluation of appellant for competency.¹

Appellant asserts that a question of competency is a jurisdictional issue, citing *Rogers v.*

¹ The appellee asserts that appellant's second and third claims were not raised below. As noted, the second claim was raised in the petition, at least in part. We address it only to the extent that it was raised in the petition. As for the third point, it appears that appellee misconstrued appellant's reference to a hearing as a request for a hearing in the trial court. Appellant's point is actually concerned with the circuit court's failure to provide a hearing on the issue during the habeas proceedings rather than with the trial court's failure to address the issue.

State, 264 Ark. 258, 570 S.W.2d 268 (1978), where this court indicated that “the question of a defendant’s competency to stand trial is essentially a jurisdictional matter.” *Rogers* dealt with the issue of whether the defendant’s competency is a question of fact or a question of law, not with whether the trial court lost jurisdiction when the issue was raised.

Criminal defendants are presumed to be competent to stand trial, and have the burden of proving otherwise. *Thessing v. State*, 365 Ark. 384, 230 S.W.3d 526 (2006). Under Ark. Code Ann. § 5-2-302 (1987), as was in effect at the time of appellant’s trial, the proceedings against a defendant are to be suspended while an incapacity endures, but jurisdiction is not lost. *Mauppin v. State*, 309 Ark. 235, 831 S.W.2d 104 (1992).

Likewise, appellant’s argument that the prosecution withheld evidence that would have caused the trial court to sua sponte order evaluation of appellant’s competency would have raised an issue of whether the proceedings should have been suspended, not one as to whether there was a lack of jurisdiction. Neither of these issues were claims cognizable in a petition for writ of habeas corpus.

As to appellant’s third claim, no hearing was required under the circumstances. A hearing is not required if the petition does not allege either of the bases of relief proper in a habeas proceeding, and, even if a cognizable claim is made, the writ does not have to be issued unless probable cause is shown. *Baker v. Norris*, 369 Ark. 405, ___S.W.3d ___ (2007). Because we hold that the trial court did not clearly err in finding that appellant’s petition did not state a cognizable claim, there was no requirement for a hearing on the issues.

Affirmed.