

ARKANSAS SUPREME COURT

No. 08-979

JONATHAN GRANGER
Petitioner

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Respondent

Opinion Delivered November 13, 2008

PRO SE MOTION FOR BELATED
APPEAL OR FOR WRIT OF
CERTIORARI [CIRCUIT COURT OF
LINCOLN COUNTY, LCV 2005-66,
HON. ROBERT H. WYATT, JR.,
JUDGE]

MOTION TREATED AS MOTION FOR
RULE ON CLERK AND DENIED.

PER CURIAM

On June 9, 2005, petitioner Jonathan Granger, a prisoner incarcerated in the Arkansas Department of Correction, filed a pro se petition for writ of habeas corpus in Lincoln County Circuit Court. On June 28, 2005, the circuit court entered an order dismissing the petition. Petitioner filed a timely notice of appeal and requested leave to proceed *in forma pauperis* on appeal. Petitioner later filed a motion for rule on clerk, requesting the circuit court to direct the clerk to prepare the record for appeal without the payment of certain fees, and that motion was denied. No notice of appeal appears in the record as to that order.

Petitioner now brings this motion for belated appeal or for writ of certiorari to bring up the record for appeal of the order denying his habeas petition. As the notice of appeal was timely, we treat the motion as a motion for rule on clerk to lodge the record. *See Ray v. State*, 348 Ark. 304, 73 S.W.3d 594 (2002) (per curiam). We deny the motion.

Petitioner asserts that he was prevented from pursuing the appeal because of his lack of

funds. He argues that his petition had merit and that he was entitled to a hearing. We do not consider petitioner's stated cause for the delay in lodging the record, however, because it is clear from the partial record before us that petitioner could not prevail on appeal were we to permit the appeal to proceed. An appeal of the denial of 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).

The petition for writ of habeas corpus sets forth two bases to challenge the judgment, as follows: (1) the informations containing the charges were invalid; (2) petitioner was denied representation by counsel. Neither of the two bases is a claim cognizable in a habeas proceeding.

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).

Petitioner framed the issues as matters of jurisdiction. A defect in the information is not sufficient to divest the trial court of jurisdiction. *See Ray v. State*, 344 Ark. 136, 40 S.W.3d 243 (2001). The subject-matter jurisdiction of the trial court is not implicated when the sufficiency of the information is challenged. *Sawyer v. State*, 327 Ark. 421, 938 S.W.2d 843 (1997) (per curiam). The judgment attached to petitioner's petition for writ of habeas corpus lists counsel, and the second

claim in the petition is therefore a claim of ineffective assistance of counsel. Ineffective-assistance-of-counsel claims are not cognizable by writ of habeas corpus. *McConaughy v. Lockhart*, 310 Ark. 686, 840 S.W.2d 166 (1992). As neither claim would support issuance of the writ, we deny petitioner's motion for rule on clerk.

Motion treated as motion for rule on clerk and denied.