

## SUPREME COURT OF ARKANSAS

No. 09-1052

FREDERICK SMITH

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 8, 2011

PRO SE APPEAL FROM LEE  
COUNTY CIRCUIT COURT, NO.  
CV 2009-109, HON. RICHARD  
PROCTOR, JUDGE,

AFFIRMED.

## PER CURIAM

Appellant Frederick Smith is a prisoner incarcerated in the Arkansas Department of Correction. He filed a petition for writ of habeas corpus in the circuit court of Lee County, where he is incarcerated. Following the denial of his request for habeas relief, appellant filed the instant appeal.

Appellant pled guilty in Pulaski County Circuit Court to two counts of aggravated robbery and one count each of felon in possession of a firearm, committing a terroristic act, and aggravated assault. He was sentenced by a jury to an aggregate term of 600 months' imprisonment. The original judgment and commitment order was entered of record on May 23, 2002, and an amended order followed on June 21, 2002. The court of appeals subsequently affirmed appellant's convictions and sentences. *See Smith v. State*, CACR 02-80 (Ark. App. June 11, 2003) (unpublished).

On July 9, 2009, appellant filed the instant petition for habeas relief arguing, among other things, that his sentence was void and illegal because the circuit court entered the amended judgment and commitment order after appellant had filed his notice of appeal on

May 31, 2002. He also argued that his sentence on the charge of felon in possession of a firearm was illegal because he was never informed of the nature of the charge, the circuit court rather than the jury sentenced him, and his sentence for the charges of felon in possession and aggravated robbery violated his right to be free from being put in jeopardy twice for the same offense. The circuit court entered an order denying appellant's petition for habeas relief.

As his first point on appeal, appellant argues that he was denied his right to due process where the circuit court summarily denied his petition without holding a hearing and "without developing the record" in his case. This argument is wholly without merit.

A hearing is not required on a habeas corpus petition, even where the petition alleges an otherwise cognizable ground, when probable cause for issuance of the writ is not shown by affidavit or other evidence. *Evans v. State*, 2010 Ark. 234 (per curiam). Regardless of whether the petition stated a cognizable ground for habeas relief, appellant failed to state probable cause for issuance of the writ, and, thus, no hearing was warranted.

As to his argument that his sentence is illegal because the circuit court lacked authority to enter the amended judgment after he had filed his notice of appeal, the claim is without merit. Appellant argues that the amended order imposed a sentence upon him that violated double-jeopardy principles, was improperly entered in his absence, and illegally changed his sentences from being served concurrently to consecutively.

A writ of habeas corpus will only lie where the commitment is invalid on its face or where the court authorizing the commitment lacked jurisdiction. *McKinnon v. Norris*, 366 Ark. 404, 231 S.W.3d 725 (2006) (per curiam); *Flowers v. Norris*, 347 Ark. 760, 68 S.W.3d

289 (2002). The writ may be granted where a petitioner pleads either facial invalidity or lack of jurisdiction and makes a “showing, by affidavit or other evidence, [of] probable cause to believe” that he is so detained. *See* Ark. Code Ann. § 16-112-103 (Repl. 2006). Here, appellant’s allegations failed to demonstrate either facial invalidity or that the circuit court acted without jurisdiction. The only difference in the two judgments was that the amended judgment reflects that appellant was informed of his right to appeal, reflecting the prior proceedings in open court. This court has explained that a circuit court has jurisdiction to amend a judgment and commitment order to correct a clerical error. *See, e.g., Baker v. Norris*, 369 Ark. 405, 255 S.W.3d 466 (2007). Accordingly, appellant’s argument on this point is without merit.

Next, appellant asserts that his sentence on the offense of felon in possession of a firearm is also illegal. The first two bases for his contention—that he was not informed of the nature of the charge and that he was sentenced by the circuit court instead of the jury—are not claims cognizable in a habeas corpus proceeding, as neither involves a claim of facial invalidity or a challenge to jurisdiction. *See Flowers*, 347 Ark. 760, 68 S.W.3d 289. Finally, appellant’s contention that his sentence is illegal because it violates the prohibition against double jeopardy is also meritless. The charges of aggravated robbery and felon in possession of a firearm require proof of an element not common to the other. Moreover, 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). Accordingly, we cannot say the circuit court erred in denying appellant’s petition for habeas corpus relief.

Affirmed.