

SUPREME COURT OF ARKANSAS

No. 09-1284

ROOSEVELT ABERNATHY
APPELLANT

V.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered September 8, 2011

PRO SE APPEAL FROM THE
JEFFERSON COUNTY CIRCUIT
COURT, CV 2009-727, HON. JODI
RAINES DENNIS, JUDGE

AFFIRMED.

PER CURIAM

Appellant Roosevelt Abernathy is a prisoner incarcerated in the Arkansas Department of Correction. On July 15, 2009, he filed a pro se petition for writ of habeas corpus in the circuit court of the county in which he was incarcerated. The circuit court denied his petition, and this appeal followed.

On June 16, 1982, appellant was convicted by a Pulaski County jury of capital murder and first-degree battery. The State maintained that appellant shot Janice Martin three times, causing her to lose her eye, and then proceeded to shoot and kill Terri Sue Bradley after breaking into her home. Appellant was sentenced to life imprisonment without parole. In his petition for the writ, appellant contended that his capital-murder conviction was void because the circuit court lacked jurisdiction to enter the judgment and commitment order where the felony information was flawed. He claimed that the felony information charged him with burglary and capital murder, but that he was also convicted of first-degree battery. He alleged that he was never charged with first-degree battery in the felony information. He asserted

that, because he was not given notice that he was being charged with battery, he was denied due process. The circuit court denied appellant's petition for relief because he was unable to show that the Pulaski County Circuit Court lacked jurisdiction to convict and sentence him and because he was unable to show that his judgment and commitment order was facially invalid. In its order denying relief, the circuit court specifically found that appellant was attempting to retry the same issues he raised on direct appeal.

On appeal to this court, appellant contends that the felony information was deficient because it did not provide notice of the first-degree battery charge resulting in a loss of jurisdiction and facial invalidity of his commitment. He additionally claims that he could not be charged with both first-degree battery and capital murder because the battery charge was the underlying felony in support of the capital-murder charge and because first-degree battery is a lesser-included offense of capital murder.

We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Gaye v. State*, 2009 Ark. 201, 307 S.W.3d 1. 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. *Id.* Under our statute, a petitioner who does not allege his actual innocence and proceed under Act 1780 of 2001 Acts of Arkansas must plead either the facial invalidity of the judgment or the lack of jurisdiction by the trial court 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). The burden is on the petitioner in proceedings for a writ of habeas corpus 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. *Daniels v. Hobbs*, 2011 Ark. 192 (per curiam). Habeas corpus proceedings do not afford a prisoner an opportunity to retry his case, and it is not a substitute for direct appeal or other postconviction relief. *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). Moreover, a writ of habeas corpus will not issue to correct errors or irregularities that occurred at trial, as the proper remedy in such a case is direct appeal. *Meny v. Norris*, 340 Ark. 418, 13 S.W.3d 143 (2000) (per curiam).

Appellant has failed to make the requisite showing that his commitment is facially invalid or that the committing court lacked jurisdiction to enter the judgment. Appellant was convicted of capital murder for the death of Terri Sue Bradley, and the underlying felony supporting that capital-murder conviction was burglary, not battery as suggested by appellant. He was also convicted of first-degree battery for the injuries that Janice Martin sustained after being shot. The felony information reflects both charges—capital murder with burglary as the underlying felony for the murder of Terri Sue Bradley in count one and battery in the first degree for the injuries sustained by Janice Martin as count two. Appellant’s sentence of life imprisonment without parole was, and still is, permissible for a capital-murder conviction. Ark. Stat. Ann. § 41-1501; *see also* Ark. Code Ann. § 5-10-101(c)(1) (Repl. 2006). Moreover, the Pulaski County Circuit Court undeniably had subject-matter jurisdiction to hear a felony criminal case, and appellant fails to make any argument regarding that court’s jurisdiction other than that the felony information was flawed. We have held that the subject-matter jurisdiction of the trial court is not implicated when the sufficiency of the felony information is questioned. *Sawyer v. State*, 327 Ark. 421, 938 S.W.2d 843 (1997) (denying habeas corpus

relief where petitioner claimed that information charging him with rape was insufficient). Furthermore, appellant's claims are the type that should be, and in fact were in this case, raised on direct appeal. *See Abernathy v. State*, 278 Ark. 250, 644 S.W.2d 590 (1983). As such, we are satisfied that the circuit court was correct to deny appellant's petition for habeas corpus relief.

Affirmed.