

SUPREME COURT OF ARKANSAS

No. 10-1026

LAMARCUS CHRISTOPHER
APPELLANT

V.

RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION
APPELLEE

Opinion Delivered September 29, 2011

PRO SE APPEAL FROM THE
JEFFERSON COUNTY CIRCUIT
COURT, CV 2010-351, HON. JODI
RAINES DENNIS, JUDGEAFFIRMED.**PER CURIAM**

Appellant Lamarcus Christopher entered a plea of guilty to various drug offenses in the Union County Circuit Court on July 15, 2008, and was sentenced to ninety years in prison. On December 11, 2008, he pled guilty to possession of a firearm by certain persons and was sentenced to 120 months in prison, to be served consecutively to the sentences imposed in July. On March 1, 2010, the Union County Circuit Court entered two amended judgments on each of the two cases, altering only the name of the offenses to include that appellant was charged “as habitual.” Appellant’s sentences were not altered in any way in either amendment.

On May 11, 2010, appellant filed a pro se petition for writ of habeas corpus in the Jefferson County Circuit Court in the county where he was incarcerated, arguing that he had not been properly notified that he was being charged as a habitual offender; that the amended judgment conflicted with the sentence as ordered in open court where he was not pronounced a habitual offender; and that, but for this misrepresentation, he would not have pled guilty to the

charges. He asked that his convictions be dismissed. The State filed a response to the petition, and thereafter, appellant filed a motion for production of transcript of prior proceedings.

On August 20, 2010, the circuit court denied appellant's petition with prejudice, finding that appellant failed to provide any evidence to support his allegations, that appellant failed to demonstrate that the trial court lacked jurisdiction or that his commitment order was invalid on its face, and that appellant did not allege that the amended orders in any way changed the term of years to which he had originally been sentenced in open court for the convictions. The circuit court noted that, if appellant was alleging that his attorney made misrepresentations to him regarding his status as a habitual offender, then the remedy was a timely Rule 37.1 petition.

In his brief on appeal, appellant makes two arguments: (1) the circuit court erred by failing to rule on his motion to produce the prior transcripts, which he describes as indispensable to his claims, prohibiting him from obtaining a fair review of his petition; (2) the circuit court erred in denying his petition, resulting in a decision clearly contrary to established law. Neither argument has merit.

A circuit court's denial of habeas relief will not be reversed unless the court's findings are clearly erroneous. *Smith v. State*, 2010 Ark. 137, ___ S.W.3d ___ (per curiam). The burden is on the petitioner in a habeas-corporis 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). Under our statute, a petitioner who does not allege his actual innocence¹ 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. *Id.* at 221, 226 S.W.3d at 798–99; *see also* Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006). A habeas-corpus proceeding does not afford a prisoner an opportunity to retry his case, and it is not a substitute for direct appeal or a timely petition for postconviction relief. *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam); *Meny v. Norris*, 340 Ark. 418, 13 S.W.3d 143 (2000) (per curiam). Moreover, a claim of ineffective assistance of counsel is not cognizable in a habeas proceeding. *Wilkins v. Norris*, 2011 Ark. 169 (per curiam). Rather, allegations concerning counsel’s effectiveness are properly raised in a timely petition pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011). *Id.*

The circuit court was correct to deny appellant’s petition because he made neither a claim that his judgment-and-commitment order was invalid on its face nor a claim that the sentencing court was without jurisdiction. As we have stated many times, a habeas-corpus proceeding is not a substitute for direct appeal or a properly filed postconviction petition, and it is not the appropriate vehicle for addressing claims of ineffective assistance. Appellant made no suggestion that his sentences were outside the statutory range for his respective offenses, with or without application of his habitual status, nor did he allege that the amended judgment-and-

¹Pursuant to Arkansas Code Annotated section 16-112-103(a)(2) (Repl. 2006), a petitioner who seeks a writ of habeas corpus and alleges actual innocence must do so in accordance with Act 1780 of 2001 Acts of Arkansas, codified as Arkansas Code Annotated sections 16-112-201 to -208.

commitment orders altered his sentences from those handed down when he initially pled guilty. Rather, appellant's claim—that he was charged and sentenced as a habitual offender without proper notice—is not a cognizable claim for habeas relief. Moreover, nothing contained in the transcripts of appellant's sentencing hearing will transform his arguments into proper habeas claims. Therefore, we are satisfied that the circuit court did not err in denying appellant's petition for habeas relief under these circumstances.

Affirmed.