

SUPREME COURT OF ARKANSAS

No. 10-1112

MITCHELL WADE SKINNER
APPELLANT

V.

RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION
APPELLEE

Opinion Delivered September 22, 2011

PRO SE APPEAL FROM THE
JEFFERSON COUNTY CIRCUIT
COURT, CV 10-492, HON. JODI RAINES
DENNIS, JUDGEAFFIRMED.

PER CURIAM

Appellant Mitchell Wade Skinner appeals from an order of the Jefferson County Circuit Court dismissing his pro se petition for writ of habeas corpus. For reversal, appellant challenges the circuit court's dismissal on six grounds. We affirm.

In 1996, appellant entered into a negotiated plea of guilty to capital murder and was sentenced to life without parole.¹ In 2010, appellant filed a petition for writ of habeas corpus in the circuit court in the county where he was incarcerated, alleging that the trial court lacked jurisdiction and that his conviction was illegal. Specifically, appellant alleged that the trial court

¹Subsequent to entering the plea, appellant filed in the trial court a petition for postconviction relief, pursuant to Arkansas Rule of Criminal Procedure 37.1 (1996), which was denied. We affirmed. *Skinner v. State*, CR 96-1284 (Ark. Feb. 5, 1998) (unpublished per curiam). Appellant then filed a habeas petition in Jefferson County Circuit Court where he was incarcerated. The circuit court denied the petition, and we affirmed. *Skinner v. State*, CR 99-1068 (Ark. Dec. 2, 1999) (unpublished per curiam). We denied appellant's petition for rehearing. *Skinner v. State*, CR 99-1068 (Ark. Feb. 10, 2000) (unpublished per curiam). Subsequently, appellant filed in the trial court a petition for writ of error coram nobis, which was denied. We affirmed the order. *Skinner v. State*, 344 Ark. 184, 40 S.W.3d 269 (2001).

failed to comply with Arkansas Rule of Criminal Procedure 24.1 (2011) and Arkansas Rule of Criminal Procedure 25.3 (2011) during the guilty-plea proceeding. Appellant further contended that his plea was not knowingly and voluntarily entered and that his counsel rendered ineffective assistance. The circuit court ruled that appellant failed to state a claim on which relief may be granted and dismissed appellant's habeas petition. The court also ruled that, because appellant had previously made his claims on direct appeal and in a Rule 37.1 petition, the doctrine of law-of-the-case precluded reconsideration of the issues. From that order, appellant brings this appeal.

On appeal, appellant essentially raises six allegations of error. Appellant's claims concern (1) the validity of his guilty plea, (2) the effectiveness of his attorney, (3) whether the sentencing court followed Rule 25.3, (4) whether the prosecutor reneged on a promise to seek clemency for appellant, (5) his mental competence to enter a guilty plea, and (6) a claim of actual innocence.

A writ of habeas corpus is proper when a judgment of conviction is invalid on its face or when a circuit court lacks jurisdiction over the case. *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005). Unless a petitioner can show that the circuit court lacked jurisdiction or that the commitment was invalid on its face, there is no basis for a finding that a writ of habeas corpus should issue. *Id.* 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" that he or she is illegally detained. Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006). Moreover, a habeas proceeding does not afford a prisoner an opportunity to retry his or her case, and it is not a substitute for direct appeal or postconviction relief. *Friend*, 364 Ark. 315, 219 S.W.3d 123.

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 is not warranted unless probable cause is shown. *Meny v. Norris*, 340 Ark. 418, 13 S.W.3d 143 (2000).

In the present case, appellant's claims regarding the validity of his guilty plea do not challenge the facial validity of the judgment and, therefore, were not cognizable in a petition for habeas corpus relief. *Friend*, 364 Ark. 315, 219 S.W.3d 123. Although we treat allegations of void or illegal sentences as issues of subject-matter jurisdiction, the type of factual inquiry necessary for an issue that concerns the factual basis for a plea is one that goes beyond the face of the commitment and is not the kind of inquiry to be addressed by a proceeding for the writ. *Id.* at 317, 219 S.W.3d at 125. Because appellant failed to show that the judgment of conviction was invalid on its face or that the circuit court lacked jurisdiction, the circuit court appropriately determined that the writ should not issue. *Id.*

Next, appellant claims that the trial court court "overlooked" Rule 25.3, which allows a defendant to withdraw a guilty plea if a trial judge, after accepting a plea but before sentencing, decides that "the disposition should not include the charge or sentence concessions contemplated by the agreement." Ark. R. Crim. P. 25.3(b). Appellant also asserts that the prosecutor breached the plea agreement by reneging on a promise to secure appellant's release from prison based upon the fact that appellant allegedly was not the actual perpetrator. In making these claims, appellant failed to establish that the judgment was facially invalid, and he therefore failed to state a basis for a writ of habeas corpus to issue. *See Anderson v. Norris*, 370 Ark. 110, 257 S.W.3d 540 (2007).

With respect to appellant's allegations that he was not afforded effective assistance of counsel in the trial court, a claim of ineffective assistance of counsel is not within the purview of a habeas proceeding. *Daniels v. Hobbs*, 2011 Ark. 192 (per curiam); *Tryon v. Hobbs*, 2011 Ark. 76 (per curiam); *Grimes v. State*, 2010 Ark. 97 (per curiam). Allegations concerning counsel's effectiveness would have been properly raised in a timely petition pursuant to our postconviction rule, Arkansas Rule of Criminal Procedure 37.1 (2005); *Daniels*, 2011 Ark. 192; *Moore v. Hobbs*, 2010 Ark. 380 (per curiam); *Hill v. Norris*, 2010 Ark. 287 (per curiam). A petition for writ of habeas corpus is not a substitute for proceeding under Rule 37.1. *Johnson v. Hobbs*, 2010 Ark. 459 (per curiam); *Rickenbaker v. Norris*, 361 Ark. 291, 206 S.W.3d 220 (2005).

Finally, appellant asserts on appeal that he is entitled to relief because he is actually innocent, notwithstanding the fact that he pled guilty. Appellant further claims that he did not intend to commit a murder and that he is innocent despite his status as an accomplice. By virtue of his guilty plea, the claims do not show that the commitment was facially invalid. *Anderson*, 370 Ark. 110, 257 S.W.3d 540.

Because appellant failed to state a cognizable claim, he did not meet his burden and has failed to show any basis for a finding that a habeas writ should issue. For the foregoing reasons, we conclude that the circuit court properly dismissed appellant's petition for writ of habeas corpus.

Affirmed.