

SUPREME COURT OF ARKANSAS

No. 10-912

RALPH DOUTHITT
APPELLANT

v.

RAY HOBBS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
APPELLEE**Opinion Delivered** October 6, 2011PRO SE APPEAL FROM THE
LINCOLN COUNTY CIRCUIT
COURT, LCV 2010-34, HON. JODI
RAINES DENNIS, JUDGE

AFFIRMED.

PER CURIAM

Appellant Ralph Douthitt was convicted on October 25, 1995, by an Independence County jury of three counts of rape, twenty-nine counts of violation of a minor, and twenty-nine counts of incest. He was sentenced to 174 years' imprisonment. This court affirmed. *Douthitt v. State*, 326 Ark. 794, 935 S.W.2d 241 (1996).

On October 2, 1997, appellant filed in the trial court a motion for permission to file a belated petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2005). The circuit court denied that motion, and, although appellant filed a notice of appeal from the decision, he failed to timely file the record with the clerk of this court. Thereafter, he filed a motion for rule on clerk, and we denied the motion and dismissed the appeal. *Douthitt v. State*, CR98-272 (Ark. Apr. 16, 1998) (unpublished per curiam).

On March 23, 2010, appellant filed a pro se petition for writ of habeas corpus pursuant to Arkansas Code Annotated section 16-112-101 (Repl. 2006) in Lincoln County Circuit

Court, the county in which he was held in custody. In his petition, he argued that his trial counsel was ineffective for failing to convince the circuit court to suppress evidence seized during a search of appellant's garage. The circuit court denied the petition, and appellant brings this appeal.

A circuit court's denial of postconviction 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 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). 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). A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case and is not a substitute for direct appeal or a timely

¹Pursuant to Arkansas Code Annotated section 16-112-103(a)(2), 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.

Appellant has filed two petitions for relief pursuant to Act 1780, both of which have been denied in circuit court and dismissed on appeal by this court. *Douthitt v. State*, CR 07-527 (Ark. Dec. 13, 2007) (unpublished per curiam); *Douthitt v. State*, 366 Ark. 579, 237 S.W.3d 76 (2006) (per curiam). Both petitions filed pursuant to Act 1780 advanced the same argument that appellant makes in his current habeas petition—that his trial counsel was ineffective for failing to obtain the suppression of evidence.

Cite as 2011 Ark. 416

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).

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.*

In his most recent petition, appellant argues that his trial counsel was ineffective for failing to successfully argue and obtain a ruling that evidence seized by law enforcement during a search of his home should have been suppressed. As explained in *Wilkins*, appellant's ineffective-assistance argument is not cognizable in a habeas petition.

Affirmed.