

## SUPREME COURT OF ARKANSAS

No. 11-422

BARRY LYNN SIMPSON  
APPELLANT

V.

RAY HOBBS  
APPELLEE

Opinion Delivered September 8, 2011

APPELLANT'S PRO SE MOTION FOR  
RULE ON CLERK TO FILE NON-  
CONFORMING BRIEF [LINCOLN  
COUNTY CIRCUIT COURT, LCV  
2010-149, HON. JODI RAINES  
DENNIS, JUDGE]APPEAL DISMISSED; MOTION  
MOOT.**PER CURIAM**

In 1995, appellant Barry Lynn Simpson entered a plea of guilty to murder in the first degree in the Saline County Circuit Court. He was sentenced to life imprisonment.

In 2010, appellant filed in the county in which he was incarcerated a petition for writ of habeas corpus pursuant to Arkansas Code Annotated sections 16-112-101 to -123 (Repl. 2006). In the petition, appellant argued that the trial court lacked jurisdiction in his case because the court failed to abide by the requirements of Arkansas Rule of Criminal Procedure 24.1 to 24.8 (1995) when taking the plea. The petition was denied, and appellant lodged an appeal in this court. Now before us is appellant's motion seeking leave to file a brief that does not conform to our rules.

We need not address the merits of the motion because it is clear from the record that appellant could not prevail on appeal. Accordingly, the appeal is dismissed, and the motion is moot. An appeal from an order that denied a petition for postconviction relief, including a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that

the appellant could not prevail. *Chappell v. Hobbs*, 2011 Ark. 220 (per curiam); *Anderson v. State*, 2011 Ark. 35 (per curiam); *McCullough v. State*, 2010 Ark. 394 (per curiam); *Moore v. Hobbs*, 2010 Ark. 380 (per curiam); *Washington v. Norris*, 2010 Ark. 104 (per curiam); *Edwards v. State*, 2010 Ark. 85 (per curiam); *Pineda v. Norris*, 2009 Ark. 471 (per curiam).

Appellant failed to demonstrate in his petition that the writ was warranted. The burden is on the petitioner in a petition for 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) (citing *Jackson v. Norris*, 2011 Ark. 49, \_\_\_ S.W.3d \_\_\_); *Moore*, 2010 Ark. 380; *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). Under our statute, a petitioner 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. *Young*, 365 Ark. at 221, 226 S.W.3d at 798–99; Ark. Code Ann. § 16-112-103(a)(1).

Appellant’s contention that the trial court lacked jurisdiction in his case on the ground that the court violated procedural rules when the plea was taken did not establish a lack of jurisdiction. This court has specifically held that claims concerning whether a petitioner’s plea proceedings were in compliance with Rule 24 are not cognizable in habeas proceedings. *Lumley v. State*, 2011 Ark. 365 (per curiam); see also *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). Appellant did not contend that his sentence was outside the statutory range for the offense, but, even where such a claim is made, the claim must be substantiated in order to warrant relief. *Lumley*, 2011 Ark. 365; see also *Washington v. Norris*,

2010 Ark. 104 (per curiam).

Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Anderson*, 2011 Ark. 35; *Baker v. Norris*, 369 Ark. 405, 255 S.W.3d 466 (2007). A circuit court has subject-matter jurisdiction to hear and determine cases involving violations of criminal statutes. *Id.* Appellant raised no argument that called into question the court's jurisdiction to accept his plea of guilty and enter a judgment. *See Johnson v. Hobbs*, 2010 Ark. 459 (per curiam).

In circumstances such as appellant's, where an appellant who sought a writ of habeas corpus waived his right to a jury trial and accepted a negotiated plea to the sentence, we do not look beyond the permitted statutory range of punishment in determining whether the sentence in the judgment was invalid. *Lumley*, 2011 Ark. 365; *Anderson v. Norris*, 370 Ark. 110, 257 S.W.3d 540 (2007) (per curiam). Appellant failed to state probable cause in the petition as required by the statute. Because the petition did not state a basis to warrant issuance of the writ, the circuit court did not err in denying the relief sought

Appeal dismissed; motion moot.