

SUPREME COURT OF ARKANSAS

No. 11-489

CARL EDWARD WILLIS

APPELLANT

V.

RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION

APPELLEE

Opinion Delivered December 1, 2011

PRO SE MOTION FOR EXTENSION
OF BRIEF TIME [J]EFFERSON
COUNTY CIRCUIT COURT, CV 2011-
53, HON. JODI RAINES DENNIS,
JUDGEAPPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

Appellant Carl Edward Willis is a prisoner incarcerated in the Arkansas Department of Correction. He filed a petition for writ of habeas corpus in the circuit court of the county in which he is incarcerated, which was denied. Appellant lodged this appeal of that order, and he has filed a motion for an extension of time in which to file his brief. Because the petition was clearly without merit, we dismiss the appeal, and the motion is moot.

An appeal from an order that denied a petition for a 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. *Hill v. Norris*, 2010 Ark. 287 (per curiam). In this case, appellant's petition was clearly deficient. 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). 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. *Id.*; Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006). Appellant's petition did not make the requisite showing of probable cause for the only potentially cognizable claim stated in the petition.

The petition listed a number of claims that alleged trial error and ineffective assistance of counsel. Claims of trial error and ineffective assistance are not cognizable in habeas proceedings. *See Clem v. Hobbs*, 2011 Ark. 311 (per curiam). Appellant could not employ a petition for writ of habeas corpus to serve as a substitute for a proceeding under Arkansas Rule of Criminal Procedure 37.1 (2005) or direct appeal. *Id.* Mere trial error does not deprive a court of jurisdiction. *Wilkins v. Norris*, 2011 Ark. 169 (per curiam).

Appellant's petition included claims concerning defects in the information that charged him, and most of those claims appeared to be additional allegations of trial error, asserting improper amendment of the information, lack of notice, and failure to include sufficient information to identify the crime, for example. Allegations that an information is defective generally are not considered to be jurisdictional and are treated as trial error. *See Davis v. State*, 2011 Ark. 88 (per curiam). Claims of a defective information that raise a jurisdictional issue, such as those that raise a claim of an illegal sentence, are cognizable in a habeas proceeding. *Parmley v. Hobbs*, 2011 Ark. 75 (per curiam). At times, the allegations in the petition seemed to be that appellant was never in fact actually charged with the crime of which he was convicted. To the extent that appellant may have stated such a cognizable claim, he failed to provide the

requisite probable cause.

The petition did not include copies of the charging documents for the judgment at issue. In the opinion that affirmed the judgment, however, the Arkansas Court of Appeals indicated that appellant was charged with both second-degree sexual assault and rape. *Willis v. State*, CACR 05-1111 (Ark. App. Aug. 30, 2006) (unpublished). An amended information contained in the record of that appeal confirms that appellant was charged with second-degree sexual assault and rape. The opinion, the record on direct appeal, and the judgment attached to the petition reflect that appellant was convicted of second-degree sexual assault. Appellant's challenges to the information were not therefore supported by the record as jurisdictional challenges, even if so framed. In light of the circumstances, appellant did not make a showing of probable cause to believe that he was illegally detained. Because appellant stated no basis to support issuance of the writ, the petition was without merit, and appellant could not prevail on appeal.

Appeal dismissed; motion moot.