

**SUPREME COURT OF ARKANSAS**

No. 11-493

JEFF MORGAN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered

September 29, 2011

APPELLANT'S PRO SE MOTION FOR PHOTOCOPIES OF BRIEF AT PUBLIC EXPENSE [LEE COUNTY CIRCUIT COURT, CV 2011-25, HON. RICHARD L. PROCTOR, JUDGE]

APPEAL DISMISSED; MOTION MOOT.

**PER CURIAM**

In 2003, appellant Jeff Morgan was found guilty by a jury of kidnapping, a Class Y felony, and second-degree battery. He was sentenced as a habitual offender to an aggregate term of life imprisonment. We affirmed. *Morgan v. State*, 359 Ark. 168, 195 S.W.3d 889 (2004).

On February 24, 2011, appellant filed in the county in which he was incarcerated a pro se 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 evidence did not support a judgment of conviction for Class Y kidnapping, that he was denied due process of law in that his trial was not fair and impartial, that he was denied effective assistance of counsel, and that the trial court abused its discretion. He asked that a hearing be held on the issues. The petition was denied without a hearing, and appellant lodged an appeal in this court. Now before us is appellant's motion seeking photocopies of his brief-in-chief at public expense.

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 entirely conclusory contentions of trial error did not demonstrate that the trial court lacked jurisdiction or that the commitment entered was facially invalid. Assertions of trial error are not cognizable as grounds for a writ of habeas corpus. *Clem v. Hobbs*, 2011 Ark. 311 (per curiam). Likewise, appellant’s claim that the evidence was insufficient to sustain a conviction for a Class Y kidnapping was a challenge to the sufficiency of the evidence, not an

attack on the court's jurisdiction or the facial validity of the judgment and commitment. Attacks on the sufficiency of the evidence must be made at trial or on the record on direct appeal. Such challenges are not cognizable in a habeas proceeding. *Clem*, 2011 Ark. 311; *Daniels v. Hobbs*, 2011 Ark. 192 (per curiam). As to appellant's allegation that he was not afforded effective assistance of counsel, such issues are properly raised under our postconviction rule, Arkansas Rule of Criminal Procedure 37.1 (2011), and are not grounds for habeas relief. *Willis v. Hobbs*, 2011 Ark. 312 (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. He further made no showing that the commitment in his case was invalid. 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.

With respect to appellant's request for a hearing on the petition for writ of habeas corpus, the statutes governing habeas proceedings, Arkansas Code Annotated sections 16-112-101 to -123 (Repl. 2006), do not require a circuit court to hold a hearing or make written findings on a petition. *Lumley v. State*, 2011 Ark. 265, at 2 (per curiam). Here, petitioner raised no issue cognizable in the habeas proceeding; accordingly, there could be no need for a hearing. *Henderson v. State*, 2010 Ark. 30 (per curiam) (holding that a hearing is not warranted where no basis for the writ is contained in the petition); *see also Baker v. Norris*, 369 Ark. 405, 355 S.W.3d 466 (2007).

Appeal dismissed; motion moot.