Cite as 2011 Ark. 468

SUPREME COURT OF ARKANSAS

No. 11-588

Opinion Delivered November 3, 2011

BOBBY THREADFORD
PETITIONER

V.

RAY HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION
RESPONDENT

PRO SE MOTION FOR WRIT OF PROHIBITION OR FOR RULE ON CLERK FOR PRODUCTION OF RECORDS FOR BELATED APPEAL [JEFFERSON COUNTY CIRCUIT COURT, CV 2010-114, HON. JODI RAINES DENNIS, JUDGE]

MOTION TREATED AS MOTION FOR BELATED APPEAL AND DENIED.

PER CURIAM

In 1999, petitioner Bobby Threadford was found guilty of aggravated robbery, residential burglary, fleeing, second-degree forgery, and two counts of theft of property. He was sentenced as a habitual offender to an aggregate sentence of 1,944 months' imprisonment. The Arkansas Court of Appeals affirmed. *Threadford v. State*, CACR 00-428 (Ark. App. Nov. 8, 2000) (unpublished).

In 2010, petitioner 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, petitioner argued that the felony information in his case was flawed and that he should not have been found to be a habitual offender. On December 29, 2010, the circuit court dismissed the habeas petition on the grounds that it did not raise an issue cognizable in a habeas proceeding.

No appeal was taken from the December 29, 2010 order. On June 13, 2011, petitioner filed the motion that is now before us entitled, "Motion for Writ of Prohibition and/or for Rule on Clerk for Production of Records for Belated Appeal Appeal [sic]." While the motion refers to a writ of prohibition, the motion is clearly intended as a means to obtain the record necessary to proceed with a belated appeal of the December 29, 2010 order.

We first note that, if petitioner desired to proceed with a motion for belated appeal in this court concerning the December 29, 2010 order, it was his burden to submit the motion to this court with a certified record sufficient to file it. As petitioner did indeed submit a certified record sufficient to file a motion for belated appeal, and as it is evident from the content of the motion that he desires to proceed with such a motion, we treat the motion as a motion for belated appeal.

The motion must be denied inasmuch as there was no ground stated in the petition filed in the circuit court for a writ of habeas corpus to issue. 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).

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). 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. *Anderson*, 2011 Ark. 35. 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.

This court has consistently held that the proper time to object to the form or sufficiency of an indictment or information is prior to trial. *Van v. Hobbs*, 2011 Ark. 287 (per curiam); *see also Prince v. State*, 304 Ark. 692, 805 S.W.2d 46 (1991); *England v. State*, 234 Ark. 421, 352 S.W.2d 582 (1962). We have declined to review the sufficiency of an information on appeal when there was no proper objection in the court below. *Van*, 2011 Ark. 287; *Prince*, 304 Ark. 692, 805 S.W.2d 46. If we considered the issue to be jurisdictional, we could overlook the failure to object and reverse the conviction, if necessary, on our own motion. *Van*, 2011 Ark. 287; *see also Jones v. State*, 297 Ark. 485, 763 S.W.2d 81 (1989). Petitioner here couched his petition in terms

of a jurisdictional challenge, but he offered no substantiation to demonstrate that the trial court was indeed without personal or subject-matter jurisdiction in his case. A nonjurisdictional challenge to the sufficiency of an information must be raised prior to trial. *Van*, 2011 Ark. 287; *see Ray v. State*, 344 Ark. 136, 40 S.W.3d 243 (2001) (citing *McNeese v. State*, 334 Ark. 445, 976 S.W.2d 373 (1998)). Assertions of trial error are not cognizable as grounds for a writ of habeas corpus. *Clem v. Hobbs*, 2011 Ark. 311 (per curiam); *see also State v. Eason & Fletcher,* 200 Ark. 112, 143 S.W.2d 22 (1940).

Motion treated as motion for belated appeal and denied.