

ARKANSAS SUPREME COURT

No. 11-605

RODNEY D. WILLIAMS

APPELLANT

V.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered January 26, 2012

PRO SE MOTIONS TO FILE A
BELATED REPLY BRIEF AND FOR
DUPLICATION OF TENDERED REPLY
BRIEF AT PUBLIC EXPENSE
[JEFFERSON COUNTY CIRCUIT
COURT, CV 2011-36, HON. JODI
RAINES DENNIS, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT.

PER CURIAM

In 1983, appellant Rodney D. Williams was found guilty by a jury of felony murder in the first degree and aggravated robbery. He was sentenced as a habitual offender to an aggregate term of life imprisonment. We affirmed. *Williams v. State*, 281 Ark. 91, 663 S.W.2d 700 (1983), *cert. denied.*, 469 U.S. 980 (1984).

In 2011, appellant, who was incarcerated at a unit of the Arkansas Department of Correction in Jefferson County, filed a pro se petition for writ of habeas corpus in the Jefferson County Circuit Court.¹ The circuit court dismissed the petition, and appellant lodged an appeal of that order in this court. Now before us are appellant's motion to file belated reply brief and motion for duplication of the tendered reply brief at public expense.

We need not consider the motions, inasmuch as it is clear from the record that appellant

¹As of the date of this opinion, appellant remains incarcerated at the prison facility in Jefferson County.

could not prevail on appeal. An appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Russell v. Howell*, 2011 Ark. 456 (per curiam); *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam). Here, the petition filed by appellant failed to state a ground on which the writ could issue.

A writ of habeas corpus is only proper when a judgment of conviction is invalid on its face or when a circuit court lacked jurisdiction over the cause. *Abernathy v. Norris*, 2011 Ark. 335 (per curiam); *Davis v. Reed*, 316 Ark. 575, 873 S.W.2d 524 (1994). 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). The petitioner must plead either the facial invalidity or the lack of jurisdiction 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.

Appellant argued in his petition for writ of habeas corpus that the writ should issue because he was not a habitual offender. Appellant raised essentially the same challenge to his habitual offender status in a petition filed in the trial court in 1996 pursuant to Arkansas Code Annotated section 16-90-111 (Supp. 1995). The petition was denied. This court affirmed the order. *Williams v. State*, CR 97-361 (Ark. Apr. 16, 1998) (unpublished per curiam). In the opinion, we noted as follows:

Williams was convicted of first degree felony murder. At the time of his conviction, first degree murder was a Class Y felony that was punishable by a term of not

less than twenty (20) years nor more than sixty (60) years, or life. Ark. Stat. Ann. §§ 41-1502 & 41-1001 (Supp. 1983). Consequently, the life sentence he received, regardless of the validity of the convictions that were used to enhance his sentence, was not facially invalid. See *Bangs v. State*, 310 Ark. 235, 835 S.W.2d 294 (1992).

Williams, CR 97-361, at 2 slip op.

In 2006, appellant again raised the issue in the trial court of whether his sentence was illegal based on the assertion that he was wrongfully found to be a habitual offender. The trial court denied relief, and we affirmed on appeal. *Williams v. State*, CR 97-559 (Ark. Oct. 11, 2007) (unpublished per curiam). We again noted that the life sentence was not illegal, regardless of the validity of the convictions used to enhance it. *Id.* at 2.

In the instant habeas petition, appellant expanded his argument to contend that, if there was error in the determination that he was a habitual offender, then the trial court lacked jurisdiction to enter the judgment. He further asserted that he was denied due process of law on the ground that the State invoked the wrong habitual-offender statute to enhance his sentence. Appellant has not shown a basis for a writ of habeas corpus to issue.

Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Anderson v. State*, 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.* It is true that we will treat allegations of void or illegal sentences similarly to the way that we treat problems of subject-matter jurisdiction. *Friend v. State*, 364 Ark. 315, 219 S.W.3d 12 (citing *Taylor v. State*, 354 Ark. 450, 125 S.W.3d 174 (2003)). Detention for an illegal period of time is what a writ of habeas corpus is designed to correct. *Id.* at 455, 125 S.W.3d at 178. However, a habeas-corpus proceeding does not afford a prisoner

an opportunity to retry his case, and it is not a substitute for direct appeal or postconviction relief. *Meny v. Norris*, 340 Ark. 418, 420, 13 S.W.3d 143, 144 (2000). Determining whether the prior convictions used to establish that he was a habitual offender were valid requires the kind of factual inquiry that goes beyond the facial validity of the judgment and commitment and does not, in itself, call into question the court's jurisdiction. *See Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 12 (2005). If there were some challenge to be made to the proof used to establish his status as a habitual offender, it could have been raised in the trial court and on the record on direct appeal.

To the extent that the claim raised by appellant regarding the introduction into evidence of the prior convictions could have been construed as a claim that he was denied effective assistance of counsel, allegations of ineffective assistance of counsel are not cognizable in a habeas proceeding. *Rodgers v. State*, 2011 Ark. 443 (per curiam); *Willis v. State*, 2011 Ark. 312; *Tryon v. State*, 2011 Ark. 76 (per curiam); *Grimes v. State*, 2010 Ark. 97 (per curiam). Claims concerning counsel's effectiveness are properly raised pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011). *Rodgers*, 2011 Ark. 443; *Christopher v. Hobbs*, 2011 Ark. 399 (per curiam); *Moore v. State*, 2010 Ark. 380; *Hill v. Norris*, 2010 Ark. 287 (per curiam). A petition for writ of habeas corpus is not a substitute for proceeding under Rule 37.1. *Rodgers*, 2011 Ark. 443; *Tryon*, 2011 Ark. 76; *see also Johnson v. Hobbs*, 2010 Ark. 459 (per curiam); *Rickenbacker v. Norris*, 361 Ark. 291, 206 S.W.3d 220 (2005).

In short, none of appellant's claims in his petition raised a question of jurisdiction or established that the commitment was invalid on its face. Appellant's claims could have been

raised at trial and on the record on direct appeal. A habeas corpus proceeding does not afford a prisoner a means to revisit the merits of matters that could have been addressed, and settled, at trial. *Douthitt v. Hobbs*, 2011 Ark. 416 (per curiam). If there were some violation of due-process to be claimed by appellant, including irregularities at trial, those issues were factual issues that should have been addressed during trial and through a direct appeal. *See id.*

Because appellant failed to state cognizable claims, he did not meet his burden of demonstrating a basis for a writ of habeas corpus to issue. *Rodgers*, 2011 Ark. 443; *Henderson v. White*, 2011 Ark. 361 (per curiam). Appellant could not, therefore, prevail on appeal of the order denying his petition. *Douthitt*, 2011 Ark. 416; *Dickinson v. State*, 2011 Ark. 413 (per curiam).

Appeal dismissed; motions moot.