

SUPREME COURT OF ARKANSAS

No. 12-401

MALIK A. KHABIR

APPELLANT

V.

RAY HOBBS, DIRECTOR
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered December 13, 2012

PRO SE MOTION FOR EXTENSION
OF BRIEF TIME [APPEAL FROM THE
LINCOLN COUNTY CIRCUIT COURT,
LCV 11-124, HON. JODI RAINES
DENNIS, JUDGE]APPEAL DISMISSED; MOTION
MOOT.**PER CURIAM**

Appellant Malik A. Khabir, who is also known as Leroy McCoy, was convicted of delivery of a controlled substance, and he was sentenced to forty years' imprisonment and a \$5000 fine. Because his crime was committed within 1000 feet of a park, his sentence was enhanced pursuant to Arkansas Code Annotated section 5-64-411(a) (Supp. 1995). We affirmed. *McCoy v. State*, 326 Ark. 104, 929 S.W.2d 712 (1996).

Subsequently, appellant filed in the circuit court a timely petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (1999), which the circuit court denied. We affirmed. *McCoy v. State*, CR 99-167 (Ark. Mar. 23, 2000) (unpublished per curiam). A later motion to correct an illegal sentence was similarly unsuccessful. *See McCoy v. State*, CR 02-930 (Ark. Jan. 23, 2003) (unpublished per curiam).

On December 13, 2011, appellant filed in the Lincoln County Circuit Court a pro se petition for writ of habeas corpus. The circuit court denied this petition by written order on February 14, 2012. Appellant filed a motion for reconsideration of the circuit court's decision

on March 6, 2012, and, when that motion was deemed denied after the circuit court failed to act upon it, appellant timely filed a notice of appeal from the February 14, 2012 order.

Now before us is appellant's motion for extension of time in which to file his brief. However, because it is clear that appellant could not prevail if his appeal were allowed to proceed, the appeal is dismissed and the motion for extension of time is moot. 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. *Williams v. Norris*, 2012 Ark. 30 (per curiam); *Russell v. Howell*, 2011 Ark. 456 (per curiam); *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam).

Appellant cannot prevail on appeal, as double-jeopardy claims are not cognizable in a petition for habeas corpus. *Misenheimer v. Hobbs*, 2012 Ark. 343 (per curiam) (citing *Randolph v. State*, 2011 Ark. 510 (per curiam)); see also *Smith v. State*, 2011 Ark. 333 (per curiam) (citing *Johnson v. State*, 298 Ark. 479, 769 S.W.2d 3 (1989)). 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. *Fuller v. State*, 2012 Ark. 376 (per curiam); *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam).

Because appellant failed to state a cognizable claim, he did not meet his burden of demonstrating a basis for a writ of habeas corpus to issue. *Misenheimer*, 2012 Ark. 343; *McArty v. Hobbs*, 2012 Ark. 257 (per curiam); *Rodgers v. Hobbs*, 2011 Ark. 443. Appellant could not, therefore, prevail on appeal of the order denying his petition. *Misenheimer*, 2012 Ark. 343;

Dickinson v. State, 2011 Ark. 413 (per curiam).

Appeal dismissed; motion moot.

Malik A. Khabir, pro se appellant.

No response.