

SUPREME COURT OF ARKANSAS

No. 12-402

MICHAEL L. JONES

APPELLANT

V.

RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION;
AND JIMMY BANKS

APPELLEES

Opinion Delivered January 31, 2013

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE BRIEF [LINCOLN
COUNTY CIRCUIT COURT, LCV 12-2,
HON. JODI RAINES DENNIS, JUDGE]APPEAL DISMISSED; MOTION
MOOT.**PER CURIAM**

Appellant Michael L. Jones is a prisoner incarcerated in the Arkansas Department of Correction serving a life sentence on a capital-murder conviction. *See Jones v. State*, 328 Ark. 307, 942 S.W.2d 851 (1997). In 2012, he filed a petition for writ of habeas corpus in the circuit court of the county where he is, and was then, incarcerated, and the circuit court dismissed the petition. Appellant lodged an appeal of the order dismissing the petition in this court, and he has filed a motion seeking an extension of time in which to file his brief-in-chief. We do not consider the motion, because we dismiss the 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. *Fuller v. State*, 2012 Ark. 376 (per curiam). It is here clear that appellant cannot prevail because his petition did not include a claim that would provide a basis to support issuance of the writ.

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. *McHaney v. Hobbs*, 2012 Ark. 361 (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. *See id.*; Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006). Appellant was not proceeding under Act 1780, and he failed to plead a factual basis to support either the facial invalidity of the judgment or a lack of jurisdiction by the trial court.

The gist of appellant's claims was that the process of service of the felony information charging him with the crime was constitutionally infirm. Appellant asserted that the information did not sufficiently describe the charge and that the process used in issuing the information was defective. He contended that the information was impermissibly served after his arraignment and that the procedural defects prevented the circuit court from obtaining jurisdiction over the charges filed. He alleged that the process prescribed was unconstitutional and that the legislature did not have authority to confer jurisdiction on the circuit court as a consequence.

Allegations of trial error concerning the information—such as improper amendment of the information, lack of notice, and failure to include sufficient information to identify the crime—are not the type of defect that raises a jurisdictional issue and are not cognizable in a proceeding for the writ. *Craig v. Hobbs*, 2012 Ark. 218 (per curiam). A circuit court has subject-matter jurisdiction to hear and determine cases involving violations of criminal statutes. *Bliss v.*

Hobbs, 2012 Ark. 315 (per curiam). Mere trial error does not deprive a court of jurisdiction. *Willis v. Hobbs*, 2011 Ark. 509 (per curiam) (citing *Wilkins v. Norris*, 2011 Ark. 169 (per curiam)). A habeas proceeding does not afford a convicted defendant an opportunity to retry his case, and it is not a substitute for direct appeal or postconviction relief. *Fuller*, 2012 Ark. 376. Appellant's allegations of constitutional violations involving the process of charging him were not the type of error cognizable in a proceeding for the writ. *See Willis*, 2011 Ark. 509.

Because appellant cannot prevail on appeal, we dismiss the appeal. Appellant's motion is therefore moot.

Appeal dismissed; motion moot.

Michael L. Jones, pro se appellant.

No response.