

SUPREME COURT OF ARKANSAS

No. 12-45

JOHNNY L. CRAIG, JR.

APPELLANT

v.

RAY HOBBS, DIRECTOR, ARKANSAS

DEPARTMENT OF CORRECTION

APPELLEE

Opinion Delivered May 17, 2012

PRO SE MOTION FOR EXTENSION OF
TIME TO FILE BRIEF [LINCOLN
COUNTY CIRCUIT COURT, LCV 2011-
85, HON. JODI RAINES DENNIS,
JUDGE]

APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

Appellant Johnny L. Craig, Jr., is an inmate incarcerated in the Arkansas Department of Correction. He filed in the county in which he is incarcerated a petition for writ of habeas corpus under Arkansas Code Annotated sections 16-112-101 to -123 (Repl. 2006). The circuit court denied the petition, and appellant lodged this appeal. Appellant filed a motion for an extension of time in which to file his brief. We need not address the merits of the motion because we dismiss the appeal, and the motion is moot.

An appeal from an order that denied a petition for a 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. *Fudge v. Hobbs*, 2012 Ark. 80 (per curiam). A review of the record on appeal makes clear that appellant cannot prevail.

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. *Culbertson v. State*, 2012

Ark. 112 (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 did not, in his petition, invoke Act 1780, and he did not either plead facts that would establish one of these two cognizable types of claim or make the requisite showing of probable cause.

The bases for appellant's claims as set out in his petition were as follows: (1) the information charging him was not sufficient because it did not establish the value of certain property and did not adequately describe the charged crime; (2) the trial court lacked jurisdiction because one of the victims did not testify or provide a statement or affidavit and appellant was therefore denied his right of confrontation; (3) the trial court lacked jurisdiction because the information that was filed did not provide that he was to be charged as a habitual offender, and he did not receive adequate notice of the enhancement; (4) the trial court gave an erroneous jury instruction concerning the unanimity of the verdict, and the conviction is invalid because the information on each count was defective. As the trial court correctly noted in its order dismissing the petition, the judgment in issue was not attached to the petition. We also note that the charging instruments were not attached.

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 raise a jurisdictional issue, and are not cognizable in a

proceeding for the writ. *Willis v. Hobbs*, 2011 Ark. 509 (per curiam); see also *Reed v. Hobbs*, 2012 Ark. 61 (per curiam); *Tbreadford v. Hobbs*, 2011 Ark. 468 (per curiam); *Davis v. State*, 2011 Ark. 88 (per curiam). In order to make a showing of probable cause as to a claim of an illegal sentence based upon an improper information, a petitioner must make a showing of probable cause by providing the court with copies of the charging instrument and judgment demonstrating the alleged defect. See *Willis*, 2011 Ark. 509. Appellant failed to do so, even assuming that he stated any facts in support of a cognizable claim concerning a defective information.

Appellant's remaining claims in the petition, those concerning his right to confrontation and defective jury instruction, are also allegations of trial error. Although appellant couched the claim as one of confrontation, his allegation that the trial court lacked jurisdiction because one of the victims did not testify against him was in fact a claim that the evidence against him was not sufficient. The sufficiency of the evidence and the admissibility of evidence are matters to be addressed at trial and on the record on direct appeal; such challenges are not cognizable in a habeas proceeding. *Asbby v. State*, 2012 Ark. 48 (per curiam); see also *Fudge*, 2012 Ark. 80 (right to confront certain witnesses was trial error that does not call into question the jurisdiction of the court or the facial validity of the judgment). If certain jury instructions were improper, appellant's remedy lay in timely objections in the trial court and appeal of any adverse ruling. *Hill v. Norris*, 2010 Ark. 287 (per curiam); see also *Alexander/Ryabim v. Norris*, 2009 Ark. 532 (per curiam). Mere trial error does not deprive a court of jurisdiction. *Willis*, 2011 Ark. 509 (citing *Wilkins v. Norris*, 2011 Ark. 169 (per curiam)).

Appellant's petition stated no ground that would support issuance of the writ, and he

further failed to make a showing of probable cause for issuance of the writ. His petition did not merit relief, and the trial court did not err to dismiss the petition without granting relief.

Appeal dismissed; motion moot.