Cite as 2013 Ark. 142

ARKANSAS SUPREME COURT

No. 12-520

TOMMY RAY MOSLEY
APPELLANT

V.

RAY HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION
APPELLEE

Opinion Delivered April 4, 2013

PRO SE APPELLANT'S MOTION TO FILE BELATED REPLY BRIEF [JEFFERSON COUNTY CIRCUIT COURT, CV 12-119, HON. JODI RAINES DENNIS, JUDGE]

APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

In 1995, appellant Tommy Ray Mosley was convicted of rape and sentenced as a habitual offender to life imprisonment. This court affirmed. *Mosley v. State*, 323 Ark. 244, 914 S.W.2d 731 (1996). Subsequently, appellant filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (1996). The trial court denied the petition, and appellant failed to timely pursue an appeal. *Mosley v. State*, CR 97-919 (Ark. Oct. 23, 1997) (unpublished per curiam).

In 2012, appellant, who was incarcerated at a unit of the Arkansas Department of Correction located in Jefferson County, filed a pro se petition for writ of habeas corpus in the Jefferson County Circuit Court.[1] He contended in the petition that his sentence of life imprisonment was illegal under *Graham v. Florida*, ___ U.S. ___, 120 S. Ct. 2011 (2010), because his habitual-offender status was based on prior felonies committed when he was a juvenile. He

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

further argued that a life sentence for "non-aggressive adult rape when the defendant takes her home alive with minor injuries" was cruel and unusual punishment and thus unconstitutional. He also alleged that the imposition of a life sentence for non-homicide crimes provokes perpetrators into murdering their victims, that the same "safeguards" afforded a defendant facing a possible death sentence should be afforded a defendant facing life imprisonment, that many defendants committed crimes more heinous than his and did not receive a life sentence, that Arkansas law is grounded in racism, and that persons sentenced to death enjoy many privileges in prison not allowed persons serving a life sentence. The circuit court dismissed the petition, and appellant has lodged an appeal from the order here. He now seeks leave to file a belated reply brief on appeal.

We need not consider the motion, inasmuch as it is clear from the record that appellant 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. *Roberson v. State*, 2013 Ark. 75 (per curiam); *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).

A writ of habeas corpus is proper only when a judgment of conviction is invalid on its face or when a circuit court lacked jurisdiction over the cause. *Roberson*, 2013 Ark. 75; *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 did not establish that a writ of habeas corpus was warranted in his case. First, appellant did not call into question the facial validity of the judgment-and-commitment order entered. When appellant committed the offense of rape in 1994, Arkansas Code Annotated section 5-14-103(b) (Repl. 1993) provided that the offense was a Class Y felony. Class Y felonies were punishable by a term of ten to forty years or life. Ark. Code Ann. § 5-4-401(a)(1) (Repl. 1993). Even if appellant had not been adjudged a habitual offender, his sentence on its face was not illegal. With respect to appellant's claim that *Graham* did not allow habitual-offender status to be determined based on offenses committed when the defendant was a juvenile, appellant failed to demonstrate that the holding in *Graham* applied to his circumstances. In G*raham,* the Court held that the Eighth Amendment forbids a sentence of life imprisonment without parole for a juvenile offender who did not commit homicide. Appellant was 24 years of age when he committed the offense of rape and was not a juvenile. *Graham* did not forbid the imposition of a life sentence on appellant based on his age when he committed the prior offenses used to establish his status as a habitual offender.

Appellant also raised other Eighth Amendment cases, but he did not establish that any of those precedents barred his sentence to life imprisonment for rape. In particular, appellant raised *Coker v. Georgia*, 433 U.S. 584 (1977), in which the United States Supreme Court barred

the death sentence for the rape of an adult woman, and *Kennedy v. Louisiana*, 554 U.S. 407 (2008), in which the Court barred the death penalty for nonhomicide offenses, including the rape of a child, where the offense did not, and was not intended to result in the death of the victim. Appellant, who was not sentenced to death, fell far short of showing that those rulings barred his life sentence for rape.

Most of appellant's allegations of error, including claims of racial bias, the inequitable sentencing to different defendants accused of rape, and the conditions in which prison inmates serve their sentences, were matters outside the purview of a habeas proceeding. Such assertions do not implicate the jurisdiction of the court or the facial validity of the commitment.

Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Roberson*, 2013 Ark. 75; *Bliss v. Hobbs*, 2012 Ark. 315 (per curiam); *Culbertson v. State*, 2012 Ark. 112 (per curiam); *Fudge v. Hobbs*, 2012 Ark. 80 (per curiam). A circuit court has subject-matter jurisdiction to hear and determine cases involving violations of criminal statutes. *Bliss*, 2012 Ark. 315. Appellant did not meet his burden of demonstrating that the trial court in his case lacked jurisdiction or that the judgment-and-commitment order was facially invalid. *See Rodgers v. Hobbs*, 2011 Ark. 443 (per curiam); *see also Henderson v. White*, 2011 Ark. 361 (per curiam). As appellant failed to establish that the writ should issue, he could not prevail on appeal of the order denying his petition. *Douthitt v. Hobbs*, 2011 Ark. 416 (per curiam); *Dickinson v. Norris*, 2011 Ark. 413 (per curiam).

Appeal dismissed; motion moot.

Tommy Ray Mosley, pro se appellant.
Dustin McDaniel, Att'y Gen., by: *Vada Berger*, Ass't Att'y Gen., for appellee.