

SUPREME COURT OF ARKANSAS

No. 12-604

GARY FULLER

APPELLANT

V.

STATE OF ARKANSAS AND RAY
HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION
APPELLEES

Opinion Delivered October 4, 2012

PRO SE APPELLANT'S MOTIONS
FOR APPOINTMENT OF COUNSEL
AND TO SUPPLEMENT
APPELLANT'S BRIEF AND
PETITION FOR WRIT OF
CERTIORARI [JEFFERSON
COUNTY CIRCUIT COURT, CV-
12-250, HON. JODI RAINES DENNIS,
JUDGE]APPEAL DISMISSED; MOTIONS AND
PETITION MOOT.**PER CURIAM**

In 1982, appellant Gary Fuller was found guilty by a jury of murder in the first degree and sentenced to life imprisonment. We affirmed. *Fuller v. State*, 278 Ark. 480, 646 S.W.2d 700 (1983).

On May 9, 2012, 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 in which he contended that the evidence was insufficient to sustain the judgment, that there were serious errors at trial, and that a mistrial should have been granted because the prosecution withheld material evidence. The circuit court dismissed the petition, and appellant lodged an appeal of that order in this court. Now before us are

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

appellant's motions for appointment of counsel and to supplement his brief and a petition for writ of certiorari to bring up additional material for the record.

We need not consider the motions and petition, inasmuch as it is clear from the record that appellant could not prevail on appeal.² 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).

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's claims that the evidence was insufficient to sustain the judgment, that there

²The petition for writ of certiorari is concerned with evidence that bears on the sufficiency of the evidence to sustain the judgment. An allegation that the evidence adduced at trial was not sufficient to support the conviction was not a claim cognizable in the proceeding.

were errors by the trial judge, and that the prosecution withheld evidence did not call into question the jurisdiction of the court or the validity of the commitment in his case. Jurisdiction is the power of the court to hear and determine the subject matter in controversy.

Williams, 2012 Ark. 30; *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. *Williams*, 2012 Ark. 30. 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 123 (2005) (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. *Taylor*, 354 Ark. 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). The grounds advanced by appellant for a writ of habeas corpus were not within the purview of a habeas proceeding. Appellant's allegations could have been raised in the trial court, on direct appeal, or in a postconviction proceeding. A habeas-corpus proceeding does not afford a prisoner a means to revisit the merits of matters that could have been addressed, and settled, in the trial court, on appeal, or in a postconviction proceeding. See *Douthitt v. Hobbs*, 2011 Ark. 416 (per curiam).

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. *McArty v. Hobbs*, 2012 Ark. 501 (per curiam); *Rodgers v. Hobbs*, 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 and petition moot.

Gary Fuller, pro se appellant.

No response.