

SUPREME COURT OF ARKANSAS

No. 12-791

RICKY JUSTUS

APPELLANT

V.

RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION

APPELLEE

Opinion Delivered April 11, 2013

APPEAL FROM THE LINCOLN
COUNTY CIRCUIT COURT [LCV 12-
34, HON. JODI RAINES DENNIS,
JUDGE]

AFFIRMED.

PER CURIAM

In 2005, appellant Ricky Justus entered a plea of guilty in the Garland County Circuit Court to two counts of false imprisonment, theft of property, and domestic battery committed in the presence of a child. Sentencing was decided by a jury, and appellant was sentenced as a habitual offender to an aggregate term of 1560 months' imprisonment. The judgment-and-commitment order entered stated that appellant was not a "Sex or Child Offender as defined in A.C.A. 12-12-903" who had "to complete the Sex Offender Registration Form." The Arkansas Court of Appeals affirmed. *Justus v. State*, CACR 05-878 (Ark. App. Nov. 29, 2006) (unpublished).

In 2010, the trial court amended the 2005 judgment-and-commitment order to reflect that appellant "is a Sex or Child Offender as defined in A.C.A. 12-12-903, and is ordered to complete the Sex Offender Registration Form." Appellant subsequently filed in the trial court a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010),

contending that the amended judgment was void and illegal.¹ The petition was denied, and appellant appealed to this court. This court dismissed the appeal on the ground that the Rule 37.1 petition was not timely filed as to the original judgment, and the amended judgment did not extend the time to proceed under the rule. *Justus v. State*, 2012 Ark. 91, at 2. This court also noted that, under the Sex Offender Registration Act of 1997 (SORA), codified at Arkansas Code Annotated sections 12-12-901 to -923 (Supp. 2007), as it applied to appellant, the registration and notification components of SORA were regulatory in nature and not a form of punishment. *Justus*, 2012 Ark. 91, at 2. We further noted that, pursuant to section 12-12-906(a)(1)(A)(i), trial courts were required to designate criminal defendants who were convicted of certain crimes to register as offenders under the Act. If a defendant were found guilty or entered a plea of guilty to an offense that was a designated crime at the time he was sentenced pursuant to section 12-12-903(12)(A)(i)(r), he or she would be subject to SORA's requirements regardless of whether the SORA requirements were reflected on the original judgment. *See id.* at 2. In appellant's case, this court noted that correction of the judgment to reflect SORA's requirements did not demonstrate error so fundamental as to render the judgment void and subject to collateral attack pursuant to Rule 37.1. Accordingly, any challenge to SORA by appellant should have been by direct attack on the amended judgment, not in a Rule 37.1 proceeding. *Id.* at 2.

In 2012, appellant filed a pro se petition for writ of habeas corpus in the Lincoln County

¹The copy of the amended judgment-and-commitment order that appears in the record in this appeal is a copy of a certified, amended judgment-and-commitment order signed by the circuit judge on April 27, 2010. The copy does not bear a visible file mark. Appellant does not contend that the amended judgment-and-commitment order in the record is not an exact copy of the original, amended judgment-and-commitment order.

Circuit Court, which is located in the county where he was incarcerated.² The circuit court found no merit to the petition and dismissed it. Appellant brings this appeal.

We find no error and affirm the order. A circuit court's denial of habeas relief will not be reversed unless the court's findings are clearly erroneous. *Darrough v. State*, 2013 Ark. 28 (per curiam); *McArty v. Hobbs*, 2012 Ark. 257 (per curiam).

Appellant's sole ground in his petition filed in the circuit court for a writ of habeas corpus was the claim that the trial court did not have jurisdiction to amend the judgment-and-commitment order in 2010 because the sentence had already been put into execution. The circuit court correctly concluded that appellant had not stated a ground on which the writ could issue, in that the claim was not one that established that the judgment-and-commitment order was invalid on its face or that the trial court lacked jurisdiction to enter the judgment.

As this court said in the decision in appellant's Rule 37.1 appeal, the requirements dictated by SORA were not a part of appellant's sentence. *Justus*, 2012 Ark. 91, at 2. The 2010 amendment to the 2005 judgment was the trial court's application of what the court concluded was appropriate under SORA. Once the court made its determination that the defendant was convicted of an offense covered by SORA, the trial court had no discretion under SORA to decline to note those requirements on the judgment. *See* Ark. Code Ann. § 12-12-906(a) (Repl. 2003). As the registration and notification requirements under SORA, as applicable when appellant committed the offense, were not part of appellant's sentence, the trial court was entitled to correct its error in omitting the SORA requirements from the original judgment-and-

²As of the date of this opinion, appellant remains incarcerated in Lincoln County.

commitment order. A court can correct what amounts to a clerical error at any time. *See Misenheimer v. Hobbs*, 2012 Ark. 343 (per curiam). Again, if appellant desired to contest the SORA requirements as listed on the amended judgment, his remedy was not a postconviction remedy but rather an appeal from the amended judgment.

Appellant's second argument on appeal is that one of the charges of false imprisonment of which he was convicted that involved a child was not applicable to him because he was the parent of the child. Appellant did not raise the allegation in his petition for writ of habeas corpus filed in the circuit court, and the argument does not present a jurisdictional issue that can be raised for the first time on appeal; therefore, the issue may not be raised for the first time in this appeal. *See Kelly v. Norris*, 2013 Ark. 90 (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 v. State*, 2013 Ark. 75 (per curiam); *Murry v. Hobbs*, 2013 Ark. 64 (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" he is illegally detained. *Id.* at 221, 226 S.W.3d at 798–99.

Because appellant failed to state a claim sufficient to warrant issuance of a writ of habeas corpus, he did not meet his burden of demonstrating that his petition had merit. Therefore, the

circuit court did not err in declining to issue the writ, and the order is affirmed.

Affirmed.

Ricky Justus, pro se appellant.

Dustin McDaniel, Att’y Gen., by: *Vada Berger*, Ass’t Att’y Gen., for appellee.