

**ARKANSAS SUPREME COURT**

No. 12-971

PRESTON ROBERSON

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** February 21, 2013

PRO SE APPELLANT'S MOTION AND AMENDED MOTION TO FILE A BELATED BRIEF [LEE COUNTY CIRCUIT COURT, 39CV 12-57, HON. RICHARD L. PROCTOR, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT.**PER CURIAM**

On November 2, 2011, an information was filed in the Howard County Circuit Court charging appellant Preston Roberson with residential burglary and theft of property committed in Howard County, Arkansas. On that same date, a bench warrant and an affidavit for warrant of arrest, which was signed by an investigator with the sheriff's office and a judge, were issued for appellant. The warrant alleged that a property owner in Howard County had observed a vehicle containing property that the owner recognized as having been taken from some of his rental property. He contacted the authorities and followed the vehicle until Howard County deputies arrived and stopped it in Hempstead County where the arrest was made. Appellant later entered a plea of guilty in Howard County to breaking or entering and theft of property. He was sentenced to forty-eight months' imprisonment.

In 2012, appellant, who was incarcerated at a unit of the Arkansas Department of Correction located in Lee County, filed a pro se petition for writ of habeas corpus in the Lee

County Circuit Court.<sup>1</sup> He contended in the petition that Howard County did not have jurisdiction in the case because the information and warrants were not signed by the circuit judge and stamped with the judge's seal and because the arrest was illegal. The claim of an illegal arrest was based on the contention that he was apprehended over the county line in Hempstead County by two Howard County officers who were not in fresh pursuit of him and who did not obtain a warrant for his arrest in Hempstead County or permission from the Hempstead County authorities to make an arrest in that jurisdiction. The circuit court denied the petition for writ of habeas corpus, and appellant lodged an appeal of that order in this court. Now before us are appellant's motion and amended motion for leave to file a belated brief-in-chief.

We need not consider the motions, 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. *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. *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

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<sup>1</sup>As of the date of this opinion, appellant remains incarcerated at the prison facility in Lee County.

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, the validity of an arrest warrant is not an issue that is cognizable as a ground for a writ of habeas corpus because it does not call into question the jurisdiction of the court or the facial validity of the commitment. *Cook v. Hobbs*, 2011 Ark. 382 (per curiam); *Edwards v. Hobbs*, 2011 Ark. 336; *Grimes v. State*, 2010 Ark. 97 (per curiam). This court has explained that a court’s jurisdiction to try an accused does not depend upon the validity of an arrest. *Singleton v. State*, 256 Ark. 756, 510 S.W.2d 283 (1974). Moreover, an illegal arrest, standing alone, does not vitiate a valid conviction. *Biggers v. State*, 317 Ark. 414, 878 S.W.2d 717 (1994). Issues related to the validity of appellant’s arrest are the type of factual issues that should have been addressed in the trial court. *See Grimes*, 2010 Ark. 97.

With respect to the charging instrument, challenges to the sufficiency of the charging instrument are not jurisdictional and must be raised prior to trial. *Dickinson v. Norris*, 2011 Ark. 413 (per curiam); *Sawyer v. State*, 327 Ark. 421, 938 S.W.2d 843 (1997) (per curiam). A prosecuting attorney is not required to receive judicial approval prior to filing a charging instrument whether it is in the form of an information, indictment, affidavit for warrant of

arrest, or citation. *Dickinson*, 2011 Ark. 413; *see also State v. Brooks*, 360 Ark. 499, 202 S.W.3d 508 (2005) (citing *Nance v. State*, 323 Ark. 583, 595, 918 S.W.2d 114, 119 (1996)).

An allegation that an offense occurred outside the territorial jurisdiction of the court is cognizable in a habeas proceeding. *Cloird v. State*, 349 Ark. 33, 76 S.W.3d 813 (2002) (per curiam). Appellant, however, did not contend that the offenses to which he entered a plea of guilty occurred outside the jurisdiction of the court. He argued only that the arrest was outside the court's jurisdiction. Arkansas Code Annotated section 16-88-105(b) provides that the local jurisdiction of circuit courts shall be of offenses *committed* within the respective counties in which they are held.

Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Bliss v. Hobbs*, 2012 Ark. 315 (per curiam); *Culbertson v. State*, 2012 Ark. 112 (per curiam); *Fudge v. Hobbs*, 2012 Ark. 80 (per curiam); *Anderson v. State*, 2011 Ark. 35 (per curiam); *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. *Bliss*, 2012 Ark. 315. Appellant did not meet his burden of demonstrating a basis for a writ of habeas corpus to issue. *Rodgers v. Hobbs*, 2011 Ark. 443 (per curiam); *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*, 2011 Ark. 413.

Appeal dismissed; motions moot.