

Cite as 2011 Ark. 265

SUPREME COURT OF ARKANSAS

No. 09-301

JAMES C. LUMLEY
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered June 16, 2011

PRO SE APPEAL FROM LEE
COUNTY CIRCUIT COURT, CV
2009-28, HON. L. T. SIMES II, JUDGE

AFFIRMED.

PER CURIAM

Appellant James C. Lumley is a prisoner incarcerated in the Arkansas Department of Correction. He filed a petition for writ of habeas corpus in the circuit court of the county in which he is incarcerated that was denied. This appeal followed.

In his petition for the writ, appellant contended that his sentence was illegal because it exceeded the presumptive sentence to be imposed under the sentencing grid and because his guilty plea was taken in violation of Arkansas Rules of Criminal Procedure 24.1 to 24.8 (2007). On appeal, appellant contends that the circuit court erred in failing to hold a hearing on the matter or include written findings of fact in its order, that the State and circuit court misconstrued his Rule 24 argument in that he also alleged ineffective assistance of counsel during the proceedings, and that the trial court accepting his plea was not permitted to exceed the presumptive sentence without a jury.

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;

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otherwise there is no basis for a finding that a writ of habeas corpus should issue. *Daniels v. Hobbs*, 2011 Ark. 192 (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. *Id.*; Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006). There is no requirement set forth in Arkansas Code Annotated §§ 16-112-101 to -123 that the trial court provide findings of fact in its order denying the request for the writ.¹

Claims concerning whether a petitioner's plea proceedings were in compliance with Rule 24 are not cognizable in habeas proceedings. *See Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). Even if appellant had raised claims of ineffective assistance of counsel, those claims are not cognizable in a habeas proceeding. *Daniels*, 2011 Ark. 192, at 2; *Wilkins v. Norris*, 2011 Ark. 169 (per curiam); *Tryon v. Hobbs*, 2011 Ark. 76 (per curiam). Concerning appellant's claim that his sentence was excessive, the claim must, as noted above, be substantiated in order to warrant relief. *See Washington v. Norris*, 2010 Ark. 104 (per curiam).

A hearing is not required on a habeas corpus petition, even where the petition alleges an otherwise cognizable ground, when probable cause for issuance of the writ is not shown

¹Appellant cites to cases applying Arkansas Rule of Criminal Procedure 37.3 (2011). That rule has no application in habeas proceedings, and the statute applicable in this case does not contain comparable language. *See Rhoades v. State*, 2010 Ark. 472 (per curiam).

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by affidavit or other evidence. *Evans v. State*, 2010 Ark. 234 (per curiam). While the petition may have stated one cognizable ground for habeas relief, appellant failed to state probable cause for issuance of the writ and no hearing was warranted.

In circumstances such as this, where an appellant who sought a writ of habeas corpus waived his right to a jury trial and accepted a negotiated plea to the sentence, we do not consider the presumptive sentence or look beyond the permitted statutory range of punishment in determining whether the sentence in the judgment was invalid. *Anderson v. Norris*, 370 Ark. 110, 257 S.W.3d 540 (2007) (per curiam). Appellant did not allege that his sentence falls outside the statutory range, and he only alleged that it exceeded the presumptive sentence. Appellant failed to state probable cause in the petition as required by the statute. Because the petition did not state a basis to warrant issuance of the writ, the circuit court did not err in denying habeas relief.

Affirmed.