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SUPREME COURT OF ARKANSAS
No. CV-21-178

MELVIN JEFFERSON

APPELLANT

V.

DEXTER PAYNE, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered: January 20, 2022

PRO SE APPEAL FROM THE LINCOLN
COUNTY CIRCUIT COURT
[NO. 40CV-21-9]

HONORABLE JODI RAINES DENNIS,
JUDGE

AFFIRMED.

COURTNEY RAE HUDSON, Associate Justice

Appellant Melvin Jefferson appeals the denial of his pro se petition for writ of habeas corpus that he filed in the county where he is incarcerated. Jefferson seeks to invalidate the application of Arkansas Code Annotated section 16-93-609(b)(1) (Supp. 2001) to his parole status, which rendered him ineligible for parole.¹ As there are no grounds stated in either the petition filed in the circuit court or in his appellate arguments on which a writ of habeas corpus could be issued, we affirm.

In 2004, Jefferson pleaded guilty to one count of first-degree domestic battery of his wife and two counts of second-degree domestic battery of his two children. Jefferson was

¹Arkansas Code Annotated section 16-93-609(b)(1) states in pertinent part that any person who commits a violent felony offense and who has previously been found guilty of, or pleaded guilty or nolo contendere to, any violent felony offense shall not be eligible for release on parole.

sentenced to 300 months'--or twenty-five years'--imprisonment for first-degree domestic battery and was sentenced to 240 months'--or twenty years'--imprisonment for the two counts of second-degree domestic battery. The sentences were imposed to run concurrently. After sentencing, Jefferson was informed by the Arkansas Department of Correction (ADC) that he must serve 100 percent of his sentence pursuant to Arkansas Code Annotated section 16-93-609(b)(1).

In 2009, Jefferson filed a petition for writ of habeas corpus and appealed its denial by the circuit court, arguing on appeal that he should not have been sentenced as a habitual offender because that designation was not a part of the plea agreement, and the judgment did not reflect that he had been sentenced as a habitual offender. *Jefferson v. State*, 2010 Ark. 202 (per curiam). After reviewing the record, we denied relief, concluding that Jefferson was made aware of, and agreed to, being sentenced as a habitual offender, and that if Jefferson did not get the sentence that he had agreed to in the plea negotiations, he could have filed a timely petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010). *Id.*

Jefferson then filed a petition for writ of error coram nobis in the trial court, which was also denied. In the petition filed in the trial court and in his arguments on appeal, Jefferson sought a modification of his parole status. *Jefferson v. State*, 2019 Ark. 408, 591 S.W.3d 310. We affirmed the denial on appeal, finding that Jefferson had failed to state a claim for coram nobis relief. *Id.* On February 12, 2021, Jefferson filed another petition for

writ of habeas corpus pursuant to Arkansas Code Annotated section 16-112-101 (Repl. 2016). The circuit court denied the petition and Jefferson filed a timely appeal.

A circuit court's decision on a petition for writ of habeas corpus will be upheld unless it is clearly erroneous. *Hobbs v. Gordon*, 2014 Ark. 225, 434 S.W.3d 364. A decision is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been made. *Id.*

A writ of habeas corpus is proper when a judgment and commitment order is invalid on its face or when a trial court lacked jurisdiction over the cause. *Foreman v. State*, 2019 Ark. 108, 571 S.W.3d 484. Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Baker v. Norris*, 369 Ark. 405, 255 S.W.3d 466 (2007). When the trial court has personal jurisdiction over the appellant and also has jurisdiction over the subject matter, the court has authority to render the judgment. *Johnson v. State*, 298 Ark. 479, 769 S.W.2d 3 (1989).

A petitioner who files a writ and does not allege his or her actual innocence and proceed under Act 1780 of 2001, codified at Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2016), 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 or she is being illegally detained. *Fields v. State*, 2013 Ark. 416; Ark. Code Ann. § 16-112-103(a)(1). Proceedings for the writ are not intended to require an extensive review of the record of the trial proceedings, and the circuit court's inquiry into

the validity of the judgment is limited to the face of the commitment order. *McArthur v. State*, 2019 Ark. 220, 577 S.W.3d 385. Unless the petitioner can show that the trial court lacked jurisdiction or that the commitment order was invalid on its face, there is no basis for a finding that a writ of habeas corpus should issue. *Fields*, 2013 Ark. 416.

In the habeas petition filed in the circuit court, Jefferson alleged that the trial court failed to adhere to Rule 24.4 of the Arkansas Rules of Criminal Procedure (2004), that the habitual-offender charge reflected in the information did not contain a contra pacem clause, that the plea agreement did not reference Arkansas Code Annotated section 16-93-609(b)(1), and that the ADC has refused to consider his parole eligibility after he reached the age of fifty-five pursuant to Arkansas Code Annotated section 16-93-615(h). However, Jefferson has abandoned his first two claims on appeal and contends instead that by denying him parole, the ADC has illegally enhanced his sentence. Jefferson points out in his appellate argument that allegations of an illegal sentence can be raised for the first time on appeal. Be that as it may, Jefferson is mistaken because the judgment reflects a facially legal sentence.

A sentence is void or illegal when the trial court lacks authority to impose it. *McArty v. State*, 2020 Ark. 68, 594 S.W.3d 54. In Arkansas, sentencing is entirely a matter of statute, and this court has consistently held that sentencing shall not be other than in accordance with the statute in effect when the crime was committed. *Johnson v. Kelley*, 2019 Ark. 230, 577 S.W.3d 710. When the law does not authorize the particular sentence pronounced by a trial court, that sentence is unauthorized and illegal. *Id.* In habeas proceedings, an illegal sentence is one that exceeds the statutory maximum sentence. *Phillips v. Culclager*, 2021 Ark.

149. Jefferson does not argue on appeal that he did not commit three prior felonies and concedes that he was charged as a habitual offender.

The judgment of conviction reflects that Jefferson was convicted of first-degree domestic battery, a Class B felony. *See* Ark. Code Ann. § 5-26-303(b)(1) (Supp. 2003). Under the habitual-offender statute, when a defendant has been previously convicted of more than one but less than four prior felonies, the maximum penalty for a Class B felony is thirty years' imprisonment. Ark. Code Ann. § 5-4-501(a)(2)(C) (Supp. 2003). Jefferson was additionally sentenced to 2 twenty-year terms of imprisonment for two counts of second-degree domestic battery, which is a Class C felony. Ark. Code Ann. § 5-26-304. Under the habitual-offender statute, the maximum penalty for a Class C felony is twenty years' imprisonment. Ark. Code Ann. § 5-4-501(a)(2)(D). Jefferson's sentences did not exceed the statutory maximum for a habitual offender with three prior felonies, and the judgment is facially legal. While the judgment does not reflect that Jefferson was sentenced as a habitual offender, the record demonstrates that the information charged him as such. And in addressing Jefferson's first habeas petition, we found that Jefferson was aware of the habitual-offender charge and its related sentence enhancements and that the judgment was legal and subject to correction nunc pro tunc.² *See Jefferson*, 2010 Ark. 202.

²An order or a judgment nunc pro tunc may be entered upon proof that such order or judgment was made and not entered, and such fact may be proved by oral evidence or written memoranda like any other fact might be proved. *Jones v. Kelley*, 2020 Ark. 290. It is well settled in Arkansas that a court of record has the authority to enter nunc pro tunc judgments to cause the record to speak the truth, whether in criminal or civil cases. *Id.*

Jefferson also insists that the ADC has illegally enhanced his sentence by miscalculating his parole eligibility in contravention of his negotiated plea agreement, which, Jefferson maintains, did not include any agreement or information regarding his parole status. Jefferson further asserts that his sentence is illegal in that the ADC has disregarded his entitlement to parole pursuant to the provision currently codified at Arkansas Code Annotated section 16-93-615(h) (Repl. 2016) whereby an inmate “may” be considered for parole after reaching the age of fifty-five. These claims are not cognizable in habeas proceedings.

Habeas proceedings do not extend to issues of parole eligibility and are limited to the questions of whether the petitioner is in custody pursuant to a valid judgment of conviction and whether the convicting court had proper jurisdiction. *Cervantes v. Kelley*, 2020 Ark. 391, 612 S.W.3d 162. Parole eligibility falls clearly within the domain of the executive branch—specifically, the ADC—as fixed by statute. *Id.* A question regarding parole eligibility is not properly raised in a habeas proceeding because it does not challenge the circuit court’s jurisdiction or the facial validity of the judgment. *Finney v. Kelley*, 2020 Ark. 145, 598 S.W.3d 26. As stated above, Jefferson’s sentences do not exceed the maximum penalty for the offenses to which he pleaded guilty, and the judgment is therefore facially valid.

Affirmed.

Jefferson v. Payne, pro se appellant.

Leslie Rutledge, Att’y Gen., by: *Michael Zangari*, Ass’t Att’y Gen., for appellee.