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SUPREME COURT OF ARKANSAS

No. CV-21-262

MICHAEL L. BOYD

APPELLANT

V.

DEXTER PAYNE, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered: April 7, 2022

PRO SE APPEAL FROM THE LEE
COUNTY CIRCUIT COURT
[NO. 39CV-21-45]

HONORABLE CHRISTOPHER W.
MORLEDGE, JUDGE

AFFIRMED.

KAREN R. BAKER, Associate Justice

Appellant Michael L. Boyd appeals from the denial of his pro se petition for writ of habeas corpus filed pursuant to Arkansas Code Annotated section 16-112-101 (Repl. 2016). Boyd contends his imprisonment is illegal, and in making that claim, he essentially argues that (1) a different standard of review should be applied to habeas cases; (2) he is actually innocent; (3) the evidence was insufficient to sustain the judgment of conviction; (4) money was unconstitutionally seized from his wallet during an illegal arrest, and Detective Michael Gibbons violated his rights during detention and interrogation; and (5) his petition was denied without a hearing or due consideration. Boyd failed to state a basis for issuance of the writ, and we affirm the decision of the circuit court.

I. Background

On September 13, 2013, a man entered the Bank of the Ozarks branch in North Little Rock with what appeared to be a handgun in his waistband, demanded money, took

\$4,000 of the bank's money, and left in a car described by bank tellers. Boyd was stopped in his car about an hour after the robbery, and he subsequently submitted to an interview after waiving his *Miranda* rights. In his interview, Boyd admitted visiting three banks that day, including the bank that was robbed; having a fake gun; and taking money from a bank teller.

At trial, evidence was admitted showing that a man matching Boyd's description had shown up at two Metropolitan Bank locations the day of the robbery before entering the Bank of the Ozarks location. Sholanda Jenkins, a bank manager at Metropolitan Bank, testified and described a man who was wearing a dust mask, and when asked to remove it, he refused. Jenkins verified a still photo of the man in the bank that day as shown on the bank surveillance. Kathryn Pannell, a teller from Metropolitan Bank, testified that while she was on a break, she saw Boyd without his mask immediately before he entered the bank. Pannell also saw his vehicle and license plate, which she reported to police. Pannell identified Boyd in court as the man in the still photos from the bank lobby. Pannell had also identified Boyd in a photographic spread four months after the robbery. Employees from Bank of the Ozarks testified and verified that the video surveillance of the robbery was accurate, although they could not identify Boyd. Detective Cody Brown detained Boyd after the robbery, and when Boyd was pulled over, Boyd told Brown that he had not been on Camp Robinson Road, although Brown had not made any mention of that road. A portion of the audio-recorded interview with Boyd was played, and transcripts of that portion were provided to the jury.

Boyd was convicted by a Pulaski County jury of aggravated robbery and theft of property and was sentenced to 360 months' and 120 months' imprisonment, respectively, to be served consecutively. Boyd appealed his convictions and sentences, and the Arkansas Court of Appeals affirmed. *Boyd v. State*, 2016 Ark. App. 407, 500 S.W.3d 772.

II. *Grounds for Issuance of the Writ*

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 case. *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 does not allege his or her actual innocence and proceed under Act 1780 of 2001 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. Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2016). 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. *Jones v. Kelley*, 2020 Ark. 290. 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 v. Hobbs*, 2013 Ark. 416.

III. *Standard of Review*

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. *Ratliff v. Kelley*, 2018 Ark. 105, 541 S.W.3d 408.

IV. *Claims for Relief*

On appeal, Boyd contends that habeas pleadings should not be limited to the facial validity of a sentencing order or the trial court's lack of jurisdiction but rather should be extended to place an emphasis on "[a]ctual [i]nnocence," which allows the reviewing tribunal to consider the "probative force of relevant evidence that was either excluded or not presented at trial" without the requirement that the actual proof of innocence be "unavailable" at the time of trial. Specifically, Boyd contends that the established burden of "clear and convincing" should be lowered to a showing of "more likely than not" so that weight may be given to the corresponding injustice that is implicated by requiring an innocent man to remain imprisoned. Boyd also argues—without giving any specific context to the argument or claim—that six witnesses present at the robbery who were shown his photograph within two hours of the robbery stated he was not the person who robbed the bank; that the only identification of Boyd as the offender was made by Pannell four months after the robbery when the State realized it lacked evidence against Boyd; that Boyd's DNA was not discovered on a juice bottle recovered from the scene; that none of the \$2,700 found on Boyd's person could be traced back to the \$4,000 taken from the bank, and Boyd

demonstrated he was legally in possession of the unconstitutionally seized \$2,700; and that Boyd's rights were violated by Detective Gibbons.¹ Boyd also cursorily claimed that he was denied relief without a hearing or due consideration. Boyd fails to state a claim for issuance of the writ.

This court has addressed the issue raised by Boyd that the writ of habeas corpus will issue only if the commitment order is invalid on its face or if the committing court lacked jurisdiction and whether that standard embraces the intent of the legislature as it is expressed in the language of the habeas corpus statute. See *Sawyer v. State*, 327 Ark. 421, 938 S.W.2d 843 (1997) (per curiam). The legislature is presumed to be familiar with this court's interpretation of its statutes, and if it disagrees with those interpretations, it can amend the statutes. *Id.* (citing *Tovey v. City of Jacksonville*, 305 Ark. 401, 808 S.W.2d 740 (1991)). Without such amendments, this court's interpretation of the statute remains the law. *Id.* (citing *Morris v. McLemore*, 313 Ark. 53, 852 S.W.2d 135 (1993)).

To the extent Boyd contends he is actually innocent, Boyd brought his claim under section 16-112-101 rather than a petition under Act 1780. This court has consistently interpreted the habeas statute according to its plain meaning. Arkansas Code Annotated

¹In his habeas petition filed below, Boyd claimed that he was actually innocent; he was illegally detained; he was interrogated while under the influence of mind-altering substances and gave a coerced statement that was inconsistent with the forensic evidence and eyewitness testimony; the trial court maliciously permitted the prosecution to play a redacted video of Boyd's custodial interrogation; he was subject to an unreasonable search and seizure of the contents of his wallet; the trial court erred by denying his motions for directed verdict; and he did not receive adequate representation by trial counsel. Notwithstanding that Boyd's claims that the trial court erred by denying his motions for directed verdict and that trial counsel was ineffective are not cognizable in a habeas proceeding, arguments made to the circuit court but not included in the arguments on appeal are considered abandoned. *Brown v. State*, 2017 Ark. 364.

section 16-112-103(a)(2) provides that “[t]he procedures for those who allege actual innocence shall be in accordance with § 16-112-201 et seq. [Act 1780].” Claims of actual innocence are effectively challenges to the sufficiency of the evidence that this court will not hear in a habeas proceeding. *Peeler v. State*, 2021 Ark. 118.

Although Boyd does not develop the arguments and they are conclusory contentions, it appears that Boyd’s references to the witnesses from Bank of the Ozarks, Pannell’s trial testimony and her identification of him, the lack of DNA evidence, and the tracing of the money found on his person are challenges to the sufficiency of the evidence. This court will not research or develop an argument for an appellant. *Rea v. Kelley*, 2020 Ark. 347. Nevertheless, habeas proceedings are not a means to challenge the sufficiency of the evidence because habeas actions do not allow a petitioner to retry his case. *Watson v. Payne*, 2020 Ark. 356, 609 S.W.3d 639.

Boyd’s challenges to the legality of the search and seizure of the money, the circumstances of his detention and arrest, and the violation of his rights during his interrogation are factual questions on the admissibility of evidence that could have been raised and addressed at trial and are not cognizable in habeas proceedings. A claim that *Miranda v. Arizona*, 384 U.S. 436 (1966), has been violated is a claim of a constitutional violation and trial error that does not implicate the facial validity of the judgment or the jurisdiction of the trial court. *Davis v. Kelley*, 2019 Ark. 1, 564 S.W.3d 512. In the same vein, any challenge Boyd sought to raise to the legality of his arrest or errors in his trial

could and should have been raised in the trial court.² *Rea*, 2020 Ark. 347; *see also Ratliff v. Kelley*, 2018 Ark. 105, 541 S.W.3d 408 (noting that assertions of trial error and due-process claims do not implicate the facial validity of the judgment or the jurisdiction of the trial court).

Although Boyd made a cursory reference to the fact that he was denied habeas relief without a hearing or due consideration, there is no indication that due consideration was not given to his petition, nor does Boyd present any argument to the contrary. While our statutory habeas corpus scheme contemplates a hearing if the writ is issued, there is no requirement that a hearing be given to a petitioner regardless of the content of the petition. *Jones v. Payne*, 2021 Ark. 37, 618 S.W.3d 132. A hearing is not required on a habeas petition when probable cause for issuance of the writ is not shown by affidavit or other evidence. *Id.* Boyd failed to demonstrate probable cause for issuance of the writ and failed to establish that the circuit court erred by denying habeas relief.

Affirmed.

WEBB, J., concurs without opinion.

Michael L. Boyd, pro se appellant.

Leslie Rutledge, Att’y Gen., by: *Karen Virginia Wallace*, Ass’t Att’y Gen., for appellee.

²Boyd argues that his rights were violated by Detective Gibbons beginning with his detention, his interrogation under the influence of mind-altering substances, and through the redaction of the video of the interrogation.