

Cite as 2011 Ark. 313

SUPREME COURT OF ARKANSAS

No. 11-532

PATRICK ROBERTSON
Appellant

v.

RAY HOBBS
Appellee**Opinion Delivered** July 27, 2011APPELLANT'S PRO SE MOTION
FOR COPY OR USE OF
TRANSCRIPT [LINCOLN COUNTY
CIRCUIT COURT, LCV 2011-16,
HON. JODI RAINES DENNIS,
JUDGE]APPEAL DISMISSED; MOTION
MOOT.**PER CURIAM**

On February 7, 2011, appellant Patrick Robertson, an inmate of the Arkansas Department of Correction (ADC) by virtue of multiple criminal judgments, filed in the circuit court in the county in which he was incarcerated a pro se petition for writ of habeas corpus pursuant to Arkansas Code Annotated §§ 16-112-101 to -123 (Repl. 2006) seeking his release. He contended in the petition that the writ should issue on the ground that the ADC had misclassified him as a third-time offender, and, therefore, miscalculated his parole eligibility date.¹

The petition was denied, and appellant lodged an appeal in this court. Now before us is appellant's motion seeking a copy, or use, of the record lodged in the appeal to prepare his

¹Appellant raised the same claim in a petition for writ of mandamus filed against officials of the ADC in 2003. That petition was denied. On appeal, this court affirmed on the basis that appellant had failed to produce a record establishing that he had a legal right to a petition for writ of mandamus. *Robertson v. Norris*, 360 Ark. 597, 203 S.W.3d 82 (2005).

Cite as 2011 Ark. 313

brief-in-chief. We need not address the merits of the motion because it is clear from the record that appellant could not prevail on appeal. Accordingly, the appeal is dismissed, and the motion is moot. An appeal from an order that denied a petition for postconviction relief, including a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Chappell v. Hobbs*, 2011 Ark. 220 (per curiam); *Anderson v. State*, 2011 Ark. 35 (per curiam); *McCullough v. State*, 2010 Ark. 394 (per curiam); *Moore v. Hobbs*, 2010 Ark. 380 (per curiam); *Washington v. Norris*, 2010 Ark. 104 (per curiam); *Edwards v. State*, 2010 Ark. 85 (per curiam); *Pineda v. Norris*, 2009 Ark. 471 (per curiam).

Appellant failed to demonstrate in his petition that the writ was warranted. The burden is on the petitioner in a petition for writ of habeas corpus 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. *Daniels v. Hobbs*, 2011 Ark. 192 (per curiam) (citing *Jackson v. Norris*, 2011 Ark. 49, ___ S.W.3d ___); *Moore*, 2010 Ark. 380; *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). Under our statute, a petitioner 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. *Young*, 365 Ark. at 221, 226 S.W.3d at 798–99; Ark. Code Ann. § 16-112-103(a)(1).

Appellant did not contend that any court in which a judgment of conviction was entered against him lacked jurisdiction or that any commitment entered was illegal on its face.

Cite as 2011 Ark. 313

A claim concerning the ADC's determination of parole eligibility is not grounds for a writ of habeas corpus. *Blevins v. Norris*, 291 Ark. 70, 722 S.W.2d 573 (1987) (holding that a petition for writ of habeas corpus is not the proper remedy to challenge the calculation of parole eligibility). As appellant did not raise an issue that called into question the sentencing court's jurisdiction or the facial validity of the commitment in his cases, he did not state a ground for a writ of habeas corpus. *Bargo v. Lockhart*, 279 Ark. 180, 650 S.W.2d 227 (1983); *see also Wingfield v. State*, 2009 Ark. 499 (per curiam) (holding constitutional challenges to parole eligibility status are not cognizable in a habeas corpus proceeding).

Appeal dismissed; motion moot.