

Cite as 2011 Ark. 312

SUPREME COURT OF ARKANSAS

No. 11-436

CARL EDWARD WILLIS
Appellant

v.

RAY HOBBS
Appellee

Opinion Delivered July 27, 2011

APPELLANT'S PRO SE MOTIONS
FOR EXTENSION OF TIME TO FILE
BRIEF AND FOR STATE TO
PROVIDE COPIES OF BRIEF
[JEFFERSON COUNTY CIRCUIT
COURT, CV 2010-651, HON. JODI
RAINES DENNIS, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

In 2006, appellant Carl Willis was found guilty by a jury of sexual assault in the second degree and sentenced to 180 months' imprisonment. In 2010, he 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 grounds that (1) he was not afforded a speedy trial and was denied due process with respect to his right to a speedy trial, (2) he was subjected to abuse while in custody awaiting trial, and (3) he did not enjoy effective assistance of counsel at trial.

The petition was denied, and appellant lodged an appeal in this court. Now before us are appellant's motions seeking an extension of time to file his brief-in-chief and for the State to duplicate the brief for him. We need not address the merits of the motions because it is clear

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from the record that appellant could not prevail on appeal. Accordingly, the appeal is dismissed, and the motions are 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 demonstrate that the court in his case lacked jurisdiction or that the commitment entered was illegal on its face.

If there was a speedy trial issue to be raised, it could have been raised in the trial court. The right to a speedy trial may be waived, and the issue is not cognizable in a habeas

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proceeding. *Daniels*, 2011 Ark. 192; *Davis v. State*, 2011 Ark. 6 (per curiam) (citing *Barker v. Wingo*, 407 U.S. 514 (1972)); see also *Eubanks v. Humphrey*, 334 Ark. 21, 972 S.W.2d 234 (1998).

With respect to appellant's claims that he was not afforded effective assistance of counsel in the trial court, a claim of ineffective assistance of counsel is not cognizable in a habeas proceeding. *Tryon v. State*, 2011 Ark. 76 (per curiam); *Grimes v. State*, 2010 Ark. 97 (per curiam). Allegations concerning counsel's effectiveness are properly raised in a timely petition pursuant to our postconviction rule, Arkansas Rule of Criminal Procedure 37.1 (2011). *Moore*, 2010 Ark. 380; *Hill v. Norris*, 2010 Ark. 287 (per curiam). A petition for writ of habeas corpus is not a substitute for proceeding under Rule 37.1. See *Tryon*, 2011 Ark. 76; see also *Johnson v. Hobbs*, 2010 Ark. 459 (per curiam); *Rickenbaker v. Norris*, 361 Ark. 291, 206 S.W.3d 220 (2005).

As to appellant's contention that he was mistreated while in custody, the assertion is not one that calls into question the trial court's jurisdiction or the validity of the commitment. A habeas proceeding is a narrow remedy, not a "catch-all" to address all matters related to a criminal charge or judgment of conviction.

Appeal dismissed; motions moot.