

Cite as 2009 Ark. 445

ARKANSAS SUPREME COURT

No. 09-398

DONALD RAY PETERSON
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

Opinion Delivered September 24, 2009

PRO SE MOTIONS FOR EXTENSION
OF TIME TO FILE APPELLANT'S
BRIEF AND FOR APPOINTMENT OF
COUNSEL [CIRCUIT COURT OF
JEFFERSON COUNTY, CV 2008-1458,
HON. JODI R. DENNIS, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

Appellant Donald Ray Peterson, an inmate incarcerated in the Arkansas Department of Correction, filed a petition for writ of habeas corpus under Arkansas Code Annotated §§ 16-112-103 – 16-112-123 (Repl. 2006) that was denied. Appellant lodged an appeal of the denial of the petition in this court and has now filed two motions in which he seeks additional time to file his brief and requests appointment of counsel. We need not consider the merits of appellant's motions because we dismiss the appeal.

An appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam). Here, it is clear that appellant cannot prevail because his petition did not set forth meritorious grounds upon which the writ could issue.

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The burden is on the petitioner in a habeas corpus petition 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. *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a "showing by affidavit or other evidence, [of] probable cause to believe" he is illegally detained. *Id.* at 221, 226 S.W.3d at 798-799. Here, appellant asserted that the trial courts lacked jurisdiction to accept his guilty pleas¹ because he was charged by information rather than indictment and that the judgments that were entered were therefore invalid.

It is well settled that appellant's contention that a defendant must be charged by an indictment returned by a grand jury instead of an information is without merit. *See Ruiz v. State*, 299 Ark. 144, 165, 772 S.W.2d 297, 308 (1989). A constitutional argument as to the invalidity of the information, even if it could be raised in a postconviction proceeding, is without merit. *See Rudd v. State*, 76 Ark. App. 121, 125-127, 61 S.W.3d 885, 889-890 (2001). Because the allegations in appellant's petition were clearly without merit, appellant cannot prevail on appeal. We therefore dismiss the appeal and the motions are moot.

Appeal dismissed; motions moot.

¹ The judgments attached to appellant's petition for the writ reflected that appellant entered pleas of guilty to first-degree murder, attempted first-degree escape and attempted first-degree battery in Sebastian County Circuit Court and to kidnapping, attempted capital murder and aggravated robbery in Crawford County Circuit Court.