

Cite as 2009 Ark. 532

SUPREME COURT OF ARKANSAS

No. 09-497

CHARLES ALEXANDER/RYAHIM
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

Opinion Delivered October 29, 2009

PRO SE MOTIONS FOR APPEAL TO
BE HEARD ON FULL RECORD FROM
TRIAL COURT, FOR EXTENSION OF
TIME TO FILE REPLY BRIEF, AND
TO STRIKE APPELLEE'S BRIEF
[CIRCUIT COURT OF LINCOLN
COUNTY, LCV 2008-128, HON. JODI
RAINES DENNIS, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

In 1997, Charles Alexander/Ryahim was convicted of first degree murder and sentenced to life imprisonment. This court affirmed. *Alexander v. State*, 335 Ark. 131, 983 S.W.2d 110 (1998). Appellant then filed in the trial court a petition for postconviction relief pursuant to Arkansas Rule Criminal Procedure 37.1. The court denied the petition and we affirmed. *Alexander v. State*, CR 00-453 (Ark. Nov. 8, 2001) (per curiam).

In 2008, appellant, who was incarcerated in Lincoln County, filed a pro se petition for writ of habeas corpus in the circuit court in that county. The court denied the petition, and appellant has lodged a pro se appeal here from the order.

Now before us are appellant's pro se motions seeking an extension of time to file a reply brief, asking that this court consider the full record from the direct appeal of the judgment of conviction in his case in deciding this appeal, and asking that the appellee's brief be stricken. As appellant could not

Cite as 2009 Ark. 532

be successful on appeal, the appeal is dismissed and the motions are moot. An appeal from an order that denied a petition for postconviction relief 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).

Appellant's habeas petition raised the following arguments: (1) there was insufficient evidence to sustain the judgment; (2) improper jury instructions were given regarding aggravating and mitigating factors; (3) the prosecutor during closing argument erred by referring to an outburst by appellant during the guilt phase of the trial; (4) the prosecution wrongfully used prior convictions to establish that appellant was a habitual offender; (5) the trial court did not have subject matter jurisdiction to convict appellant of being a habitual offender, rendering the amended felony information invalid; (6) the trial court did not have subject matter jurisdiction to impose a life sentence on appellant as a habitual offender, rendering the judgment invalid; (7) the jury instructions on burden of proof were flawed; (8) the first seven arguments raised in the habeas petition entitle appellant to relief because appellant is "actually innocent."

Unless a petitioner can show that the trial court lacked jurisdiction or that the commitment was invalid on its face, there is no basis for a finding that a writ of habeas corpus should issue. *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). The petitioner must plead either facial invalidity or lack of jurisdiction and make a "showing, by affidavit or other evidence, [of] probable cause to believe" that he is illegally detained. Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006); *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991). A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case and is not a substitute for direct appeal or a timely petition for postconviction relief. *Meny v. Norris*, 340 Ark. 418, 13 S.W.3d 143 (2000) (per curiam).

In the instant matter, appellant, who was not sentenced as a habitual offender, raises claims that

Cite as 2009 Ark. 532

are either outside the scope of a habeas proceeding or are not substantiated by fact. He was convicted of first-degree murder and sentenced to life imprisonment. Arkansas Code Annotated §5-10-102(c) (Repl. 1997) provides that murder in the first degree is a Class Y felony. Arkansas Code Annotated §5-4-401(a)(1) (Repl.1997) provides that life imprisonment is within the range of possible penalties for a Class Y felony. Thus, the sentence imposed on appellant was not excessive. There were no further no grounds raised by appellant on which it could be concluded that the trial court lacked subject matter jurisdiction.

As to appellant's conclusory claim of actual innocence, a mere claim of innocence does not demonstrate that a commitment was invalid on its face or that the trial court lacked jurisdiction. *See Leaks v. State*, 371 Ark. 581, 268 S.W.3d 866 (2007). A petitioner who seeks a writ of habeas corpus and alleges actual innocence must do so in accordance with Act 1780 of 2001 Acts of Arkansas, codified as Arkansas Code Annotated §§ 16-112-201--16-112-208 (Repl.2006). Ark. Code Ann. § 16-112-103 (Repl. 2006).

Appeal dismissed; motions moot.