

ARKANSAS SUPREME COURT

No. 08-733

JAMES E. SMITH
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

Opinion Delivered October 30, 2008

PRO SE MOTIONS FOR SUBPOENA
OF DOCUMENTS FROM CIRCUIT
COURT, TO DISMISS CONVICTION,
TO FILE BELATED BRIEF AND FOR
DUPLICATION AT STATE EXPENSE
[CIRCUIT COURT OF JEFFERSON
COUNTY, CV 2008-58, HON. JODI
RAINES DENNIS, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

On January 17, 2008, appellant James E. Smith, an inmate incarcerated in the Arkansas Department of Correction, filed a pro se petition for writ of habeas corpus in the circuit court of Jefferson County, the county in which he was incarcerated. The circuit court dismissed the petition and appellant lodged an appeal of that order in this court. Appellant has filed pro se motions in which he seeks to subpoena certain documents from the circuit court, to dismiss his judgment of conviction, to file appellant's brief belatedly, and to have his brief duplicated at the State's expense.

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, ___ S.W.3d ___ (2007) (per curiam). Here, it is clear that appellant cannot prevail on appeal because his petition failed to state grounds upon which the writ could issue. We need not consider the merits of the motions as we dismiss the

appeal.

A writ of habeas corpus is only proper when a judgment of conviction is invalid on its face or when a circuit court lacked jurisdiction over the cause. *Davis v. Reed*, 316 Ark. 575, 873 S.W.2d 524 (1994). 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.

Appellant's petition, including the exhibits, was over 500 pages in length, and listed six claims as the basis for habeas relief. Those claims were various allegations of ineffective assistance of counsel, prosecutorial misconduct, and conspiracy between trial counsel and the prosecution. Appellant included allegations that certain evidence was withheld by the prosecution, that discovery rules were violated, and that false evidence was introduced. Appellant also alleged that trial counsel failed to object to introduction of certain evidence at trial, that counsel had failed to introduce other evidence that would have been beneficial to his defense, and that counsel did not object to the sufficiency of the evidence. Appellant complained of due process and other constitutional violations and that he had not received a fair trial.

None of appellant's claims in his petition raised a question of jurisdiction or that the commitment was invalid on its face. All of appellant's claims could have been raised either on direct appeal or in a proceeding under Arkansas Rule of Criminal Procedure 37.1. A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case, and is not a substitute for

postconviction relief. *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). Due process violations as claimed by appellant, including prosecutorial misconduct or other irregularities at trial, are factual issues that should have been addressed during trial or through a direct appeal. *See id.* Ineffective-assistance-of-counsel claims may be addressed in Rule 37.1 proceedings and are not cognizable by writ of habeas corpus. *See McConaughy v. Lockhart*, 310 Ark. 686, 840 S.W.2d 166 (1992).

Because appellant failed to state cognizable claims, he did not meet his burden and his petition failed to show any basis for a finding that a writ of habeas corpus should issue. Appellant cannot therefore prevail on appeal of the order dismissing his petition. Because we dismiss the appeal, the motions are moot.

Appeal dismissed; motions moot.