

SUPREME COURT OF ARKANSAS

No. CV-19-43

SHARVELT MISTER

APPELLANT

v.

WENDY KELLEY, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered June 6, 2019

PRO SE APPEAL FROM THE
LINCOLN COUNTY CIRCUIT
COURT; MOTION FOR
EXTENSION OF BRIEF TIME
[NO. 40CV-18-108]

HONORABLE JODI RAINES
DENNIS, JUDGE

AFFIRMED; MOTION MOOT.

KAREN R. BAKER, Associate Justice

Appellant Sharvelt Mister filed in the circuit court of the county where he is incarcerated a pro se petition for writ of habeas corpus.¹ The circuit court “denied and dismissed” the petition for habeas relief, after which Mister lodged this appeal.² On appeal, Mister argues that the “magistrate ‘never’ issued a[n] [arrest] warrant for Petitioner”; the criminal information was filed without supporting documentation; and because no warrant was issued, introduction of any evidence was illegal “according to the fruit of the poisonous

¹Mister’s convictions and sentences for two separate counts of delivery of cocaine with intent to deliver occurring on or about December 2 and December 20, 2010, were affirmed on appeal in *Mister v. State*, 2012 Ark. App. 536.

²Mister filed a pro se motion for extension of brief time. Because he was granted a seven-day clerk’s extension and filed his brief prior to the due date of his brief, the motion for extension of brief time is rendered moot.

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to try the accused does not depend on the validity of the arrest. *Singleton v. State*, 256 Ark. 756, 510 S.W.2d 283 (1974). Because circuit courts have subject-matter jurisdiction to hear and determine cases involving violations of criminal statutes, Mister was properly tried in a court of competent jurisdiction. *See Grimes v. State*, 2018 Ark. 407, 562 S.W.3d 215.

Claims of a defective information that raise a jurisdictional issue, such as a claim of an illegal sentence, are cognizable in habeas proceedings; however, general defective-information allegations are not. *Anderson v. Kelley*, 2018 Ark. 222, 549 S.W.3d 913. Mister's contention that the prosecutor filed the criminal information without any supporting documents is a mere assertion of trial error. Such assertions of trial error and due-process violations do not implicate the facial validity of a trial court's judgment or jurisdiction. *Id.*

With regard to the unreasonable-search-and-seizure claim, that claim is also not cognizable in a habeas proceeding. Any allegation of a violation of his right to be free from an unreasonable search and seizure is a claim of a constitutional violation and trial error that does not implicate the facial validity of the judgment or the jurisdiction of the trial court. The issue concerns factual questions on the admissibility of evidence that could have been raised at trial and addressed there. *See Davis*, 2019 Ark. 1, 564 S.W.3d 512. As such, this allegation does not fall within the purview of a habeas proceeding. Because Mister fails to allege a basis for the circuit court to grant the writ, he demonstrates no error in the dismissal of his petition.

Affirmed; motion moot.

HART, J., dissents.

As in the case before us, this court in *Jackson I* disposed of Jackson's habeas petition stating, "Jackson has failed to allege or show that the original commitment was invalid on its face or that the original sentencing court lacked jurisdiction to enter the sentence. We hold that the circuit court's dismissal of the petition for writ of habeas corpus was not clearly erroneous." *Jackson I*, 2011 Ark. 49, at 5, 378 S.W.3d at 106. Inexplicably, this court continues to cite and rely on the same rationale that the Supreme Court of the United States has expressly rejected in habeas cases. Accordingly, I must dissent.

I respectfully dissent.

IN THE CIRCUIT COURT OF LINCOLN COUNTY, ARKANSAS
ELEVENTH JUDICIAL DISTRICT, WEST - FIFTH DIVISION

SHARVELT MISTER
Inmate # 120997

PETITIONER

v.

No. 40CV-18-108-5

WENDY KELLEY, Director,
Arkansas Department of Correction

RESPONDENT

**ORDER DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS**

On this day comes on for consideration the pro se petition for writ of habeas corpus filed on July 17, 2018. On October 16, 2018, the petitioner paid the filing fee and the case commenced. From the examination of the pleadings and review of applicable law, the Court finds as follows:

HISTORY

The petitioner is currently housed in the Varner Unit of the Arkansas Department of Correction located in Lincoln County, Arkansas. The petitioner states that he is serving a total of 122 years for convictions of various drug offenses out of Sebastian County, Arkansas. The petitioner has an extensive criminal history. He is challenging the convictions and sentences in 66-CR-10-1319 and 66-CR-10-1320.

CLAIMS

Petitioner argues that the trial court did not have jurisdiction alleging that his convictions are invalid. He claims that his convictions should be declared void because he was arrested without a warrant, the evidence used to convict him was obtained in an unreasonable search and seizure, his first appearance before a judicial officer violated Arkansas Rules of Criminal Procedure 8.3, the prosecuting attorney filed a criminal Information without the proper supporting documents or proof of probable cause.

FILED

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CINDY GLOVER, CIRCUIT CLERK
LINCOLN COUNTY, ARKANSAS

cognizable claim. Petitioner's allegations are ones that should have been addressed at trial, on direct appeal, or in a timely Rule 37 petition. Petitioner has previously challenged his convictions on appeal and a Rule 37 petition, both without success. *Mister v. State*, 2013 Ark. App. 49; *Mister v. State*, 2014 Ark. 446, 2 (2014).

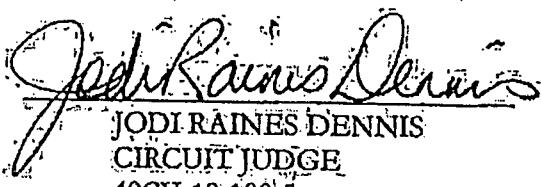
A petition for a writ of habeas corpus does not provide a means for the petitioner to challenge the evidence presented at trial nor is it a substitute for post-conviction relief. *Wesson v. Hobbs*, 2014 Ark. 285 (per curiam); *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam).

Mr. Mister's arguments referencing lack of probable cause to arrest or convict are in effect challenges to the sufficiency of the evidence which are not cognizable claims in a habeas action. *Holliday v. Hobbs*, 2014 Ark. 408 (per curiam).

RULING

The allegations raised by petitioner do not offer any evidence establishing probable cause that he is being held illegally, that the trial court lacked jurisdiction or that the commitment is invalid on its face. Therefore, the petition is DENIED and DISMISSED.

IT IS SO ORDERED this 6 day of December, 2018.



JODI RAINES DENNIS
CIRCUIT JUDGE
40CV-18-108-5

cc: Mr. Sharvelt Mister
Inmate # 120997
Arkansas Department of Correction
Varner Unit
P. O. Box 600
Grady, AR 71644-0600

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