

SUPREME COURT OF ARKANSAS

Tilson v. Kelley

543 S.W.3d 505 (Ark. 2018) · Decided April 19, 2018

SUMMARY

The Arkansas appellate court dismissed Gecoba L. Tilson's appeal from the dismissal of his habeas corpus petition, concluding that his claims concerning an allegedly defective information and inadequate notice of a witness presented trial-error and due-process issues that were not cognizable in habeas proceedings. The court also held that Tilson failed to establish probable cause that he was illegally detained; the pending motions for extensions and a copy of the record were deemed moot. Justice Hart dissented, asserting that the court lacked jurisdiction to reach the merits before the appeal was perfected.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                             |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Arkansas                                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Courtney Hudson Goodson                                                                                                                                                                                                                                     |
| JURISDICTION          | Arkansas                                                                                                                                                                                                                                                    |
| DECIDED               | April 19, 2018                                                                                                                                                                                                                                              |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Appeal from the dismissal of a petition for writ of habeas corpus; the appellant also filed motions for extensions of time to file his brief and for a copy of the appellate record.                                                                        |
| STANDARD OF REVIEW    | A circuit court's decision on a petition for writ of habeas corpus is upheld unless clearly erroneous. An appeal from an order denying postconviction relief, including habeas relief, will not proceed when it is clear that the appellant cannot prevail. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                              |
| PARTIES               | Gecoba L. Tilson v. Kelley                                                                                                                                                                                                                                  |

TOPICS

- habeas corpus
- state post-conviction relief
- appellate procedure
- standard of review
- criminal procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether Tilson's allegations concerning the victim's name in the charging information established facial invalidity of the judgment or lack of jurisdiction sufficient to support habeas relief.
2. Whether Tilson's claim that he lacked notice that Dana Clark would testify was cognizable in a habeas proceeding.
3. Whether the appeal should be dismissed because Tilson could not prevail on his habeas claims and whether his pending motions were therefore moot.

## HOLDINGS

1. A petitioner who does not allege actual innocence and proceed under Act 1780 of 2001 must plead either that the judgment is facially invalid or that the trial court lacked jurisdiction, and must support the claim with an affidavit or other evidence showing probable cause to believe that he is illegally detained.
2. The use of the wrong victim's name in the information did not render the judgment facially invalid or deprive the trial court of jurisdiction because victim-identifying language was not necessary to charge the offense adequately.
3. Claims alleging inadequate notice that a witness would testify, including claims concerning surprise or the admission of evidence, are trial-error claims and are not cognizable in a habeas corpus proceeding.
4. The appeal was dismissed because Tilson failed to allege a basis for issuance of the writ and therefore could not prevail on appeal.

## KEY QUOTATIONS

*"A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case."* (507)

*"The writ will not be issued to correct errors or irregularities that occurred at trial, and a writ of habeas corpus will not be issued as a substitute for postconviction relief."* (507)

*"Language identifying the victim is not necessary for the document to have adequately charged him with the crime and conferred jurisdiction on the trial court."* (507)

## FACTUAL BACKGROUND

Tilson was convicted in Faulkner County of two counts of aggravated robbery, felony theft of property, and misdemeanor theft of property. He alleged that the charging information incorrectly identified Dawn Cook as a victim even though Dana Clark testified at trial, and claimed that he lacked notice that Clark would testify. The information otherwise charged the offenses, and the record indicated that Clark appeared on witness lists and that defense counsel was aware of her identity and prior testimony.

## PROCEDURAL HISTORY

Tilson filed a habeas petition in the circuit court of the county where he was incarcerated, challenging a Faulkner County judgment convicting him of aggravated robbery and theft offenses. The circuit court dismissed the petition. On appeal, the Arkansas Supreme Court concluded that Tilson could not prevail because his allegations did not establish facial invalidity of the judgment, lack of trial-court jurisdiction, or probable cause to believe that he was illegally detained. The court dismissed the appeal and declared his pending motions moot.

#### DISPOSITION

dismissed

#### CASES CITED

- Garrison v. Kelley, 2018 Ark. 8, 534 S.W.3d 136
- Hobbs v. Gordon, 2014 Ark. 225, 434 S.W.3d 364
- Fields v. Hobbs, 2013 Ark. 416, 2013 WL 5775566
- Clay v. Kelley, 2017 Ark. 294, 528 S.W.3d 836
- Williams v. Kelley, 2017 Ark. 200, 521 S.W.3d 104
- England v. State, 234 Ark. 421, 352 S.W.2d 582 (1962)
- Lockhart v. State, 2017 Ark. 13, 508 S.W.3d 869
- Mackey v. Lockhart, 307 Ark. 321, 819 S.W.2d 702 (1991)
- Johnson v. State, 2018 Ark. 42, 538 S.W.3d 819
- Philyaw v. Kelley, 2015 Ark. 465, 477 S.W.3d 503

#### OPINION

GOODSON, J.

COURTNEY HUDSON GOODSON, Associate Justice Pending before this court are three pro se motions that appellant Gecoba L. Tilson filed seeking an extension of time in which to file his brief in this appeal of the circuit court's dismissal of Tilson's petition for writ of habeas corpus. Tilson has also filed a pro se motion in which he appears to seek a copy of the record on appeal.

Because it is clear from the record that the appeal is without merit, we dismiss the appeal, and the motions are moot. Tilson filed his petition in the circuit court of the county in which he was incarcerated. In it, he challenged a Faulkner County Circuit Court judgment reflecting his conviction on two counts of aggravated robbery, one count of felony theft of property, and one count of misdemeanor theft of property.

Tilson alleged that this judgment was facially invalid because the information charging him had named a victim for one of the aggravated robbery charges, Dawn Cook, who was not present at his trial. Tilson asserted that he was convicted of a charge that was never made, and he also alleged that he did not receive due process or a fair trial because he was not given fair notice that an

individual other than the victims who were named in the information would testify concerning the aggravated-robbery charges.

He alleged that he did not receive "legal notification" that he would instead face Dana Clark as a witness testifying that he had robbed her. An appeal from an order that denied a petition for postconviction relief, including an appeal from an order that denied a petition for a writ of habeas corpus, will not be permitted to go forward when it is clear that the appellant could not prevail.

Garrison v. Kelley, 2018 Ark. 8, 534 S.W.3d 136. A circuit court's decision on a petition for writ of habeas corpus will be upheld unless it is clearly erroneous. Hobbs v. Gordon, 2014 Ark. 225, 434 S.W.3d 364. A decision is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been made.

Id. Under our statute, a petitioner for the writ who does not allege his or her actual innocence and proceed under Act 1780 of 2001 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 or she is \*507being illegally detained.

Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2016); Garrison, 2018 Ark. 8, 534 S.W.3d 136. Unless the 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. Fields v. Hobbs, 2013 Ark. 416, 2013 WL 5775566. Tilson did not invoke Act 1780, and although he alleged the facial invalidity of the judgment, he did not state facts or provide evidence to establish probable cause to believe that he is being illegally detained.

Although claims of a defective information that raise a jurisdictional issue, such as those that raise a claim of an illegal sentence, are cognizable in a habeas proceeding, allegations of a defective information are not generally considered to be jurisdictional and are treated as trial error. Clay v. Kelley, 2017 Ark. 294, 528 S.W.3d 836. Assertions of trial error and due-process claims do not implicate the facial validity of the judgment or the jurisdiction of the trial court.

Williams v. Kelley, 2017 Ark. 200, 521 S.W.3d 104. Tilson attempts to frame at least a portion of his claims concerning the information as an issue of whether he was charged with a crime other than the one for which he was convicted. Yet the only defect in the information that Tilson identifies is that the wrong name was used to identify one of the victims.

Language identifying the victim is not necessary for the document to have adequately charged him with the crime and conferred jurisdiction on the trial court. See England v. State, 234 Ark. 421, 352 S.W.2d 582 (1962). An information is not defective if it sufficiently apprises the defendant of the specific crime with which he is charged to the extent necessary to enable him to prepare a defense.

Lockhart v. State, 2017 Ark. 13, 508 S.W.3d 869. Likewise, Tilson's claims of inadequate notice that Dana Clark would be used as a witness to establish the crime are merely assertions of error that could have been raised at trial, on appeal, or in a postconviction proceeding. A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case.

Mackey v. Lockhart, 307 Ark. 321, 819 S.W.2d 702 (1991). The writ will not be issued to correct errors or irregularities that occurred at trial, and a writ of habeas corpus will not be issued as a substitute for postconviction relief. *Id.* The type of claim Tilson raised here concerning surprise or inadequate notice is not one cognizable in a habeas proceeding.<sup>1</sup> See Johnson v. State, 2018 Ark.

42, 538 S.W.3d 819. An issue with the admission of evidence is a challenge that is not cognizable in a habeas proceeding. Philyaw v. Kelley, 2015 Ark. 465, 477 S.W.3d 503. Because Tilson failed to allege a basis for the circuit court to grant the writ, he demonstrated no clear error in the dismissal of his petition, and he cannot prevail on appeal. See Williams, 2017 Ark.

200, 521 S.W.3d 104. Appeal dismissed; motions moot. Hart, J., dissents. Josephine Linker Hart, Justice, dissenting. Mr. Tilson has not yet perfected his appeal, so this court's jurisdiction is limited \*508to considering his motions for an extension of time to file his brief and his motion to obtain a transcript.

Accordingly, while it is permissible for this court to dismiss Mr. Tilson's appeal because he did not timely file his brief, it is most certainly not proper to dismiss his appeal on the merits and declare the motions "moot." All that is pending before this court are simple motions. There is no just reason for skipping over Mr. Tilson's motions to reach the merits of an appeal that we do not yet have jurisdiction to consider.

This court should safeguard all appellants' constitutional rights to due process and access to the courts, not disregard those rights. I dissent. We note that there was no confusion at trial concerning whether Dana Clark was the victim. Counsel was clearly not surprised by the use of Dana Clark as a witness.

The record reflects that her name appeared on witness lists. There was video of the crime. Counsel made statements reflecting that he was obviously well aware of the witness's identity and prior testimony at a codefendant's trial.

In addition, Tilson's defense, which was that he wasn't present, was not dependent on the victim's identity.