

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

KENNETH WILLIAMS
Inmate # 957

PETITIONER

V.

No. CV 40CV 17-46-5

WENDY KELLEY, Director,
Arkansas Department of Correction

RESPONDENT

ORDER DISMISSING CORRECTED PETITION FOR WRIT OF HABEAS CORPUS

On this day comes on for consideration the Corrected Petition for Writ of Habeas Corpus filed on April 25, 2017. From examination of the pleading and review of the applicable law, the Court finds as follows:

HISTORY

On August 30, 2000, the petitioner, Kenneth Williams, was convicted of capital murder and was sentenced to death. He previously filed a petition for writ of habeas corpus on April 21, 2017. This Court dismissed the petition on April 24, 2017. The next day, Williams filed a corrected petition, curing two procedural deficiencies.

CLAIM

Williams alleges that he is intellectually disabled and that this renders his death sentence illegal and prohibits his execution.

LAW

Arkansas Code Annotated § 16-112-103(a)(1) provides, in pertinent part, that “[t]he writ of habeas corpus shall be granted forthwith ... to any person who shall apply for the writ by petition showing, by affidavit or other evidence, probable cause to believe he or she is detained without lawful authority[.]” As an initial matter, a habeas petitioner must plead either the facial invalidity of the lack of jurisdiction and make a showing, by affidavit or other evidence, of

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CINDY GLOVER, CIRCUIT CLERK
LINCOLN COUNTY, ARKANSAS

probable cause to believe he is illegally detained. *Abernathy v. Norris*, 2011 Ark. 335 (per curiam); *Birchett v. State*, 303 Ark. 220, 795 S.W.2d 53 (1990) (per curiam). A writ of habeas corpus is limited in scope. The petitioner must prove that he is detained without lawful authority. *Kozal v. Board of Correction*, 310 Ark. 648, 810 S.W.2d 154 (1992).

DISCUSSION

The petitioner has the burden to establish the basis for a finding that a writ of habeas corpus should issue. *Quezada v. Hobbs*, 2014 Ark. 396, 441 S.W.3d 910 (per curiam). Arkansas Code Annotated § 5-4-618 addresses the procedure for resolving a claim that a criminal defendant is ineligible for a sentence of death due to mental retardation, also called intellectual disability. Petitioner Williams acknowledges in his corrected petition that he did not utilize the procedure in § 5-4-618, but that the issue of his intellectual functioning was raised at his 2000 trial as a mitigating circumstance. The jury returned a sentence of death. The conviction and sentence were affirmed on direct appeal. *Williams v. State*, 67 S.W.3d 548 (Ark. 2002). Multiple unsuccessful challenges have been pursued on behalf of Mr. Williams.

Williams asks the Court to rule that he is intellectually disabled, issue a writ of habeas corpus declaring his death sentence illegal under *Atkins v. Virginia*, 526 U.S. 304 (2002), and order resentencing. The Arkansas Supreme Court has held that an *Atkins* claim is not available in state habeas corpus. *E.g.*, *Engram v. State*, 360 Ark. 140, 154, 200 S.W.3d 367, 375 (2004). In *Engram*, the appellant argued that *Atkins* obligated the Supreme Court of Arkansas to re-open his direct appeal or provide a collateral state remedy to consider his claim that he was retarded and, therefore, not subject to execution. The Supreme Court of Arkansas concluded that the state statutory procedure found in § 5-4-618, which Engram did not invoke at his trial, satisfies the constitutional procedural requirements for resolving a claim of intellectual disability. It further

concluded that there was no state judicial forum in which Engram (whose direct and collateral review cases were over) could belatedly raise an *Atkins*-type claim or challenge the statutory procedure that he altogether failed to invoke. *Id.* at 148-55, 200 S.W.3d at 370-75. Based on this Court's review of the applicable law, Williams's corrected petition for writ of habeas corpus, and the respondent's memorandum response, Williams has failed to state a viable claim for habeas corpus relief.

INEFFECTIVE ASSISTANCE

Petitioner also seemingly seeks relief by alleging, with respect to his claim of intellectual disability, ineffective assistance of his trial counsel, appellate counsel and the attorney who filed his Rule 37 Petition. It appears he expects the Court to opine that all of his previous attorneys were ineffective because Courts have refused to accept his theory that he should be able to litigate his claim of intellectual disability belatedly, and apparently in any forum he chooses. A petition for writ of habeas corpus is not a substitute for post-conviction relief, nor does it provide an opportunity to retry a case. *Wesson v. Hobbs*, 2014 Ark. 285 (per curiam); *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). Williams's claim of ineffective assistance of counsel is not cognizable in a habeas petition.

REQUEST FOR HEARING


When probable cause for issuance of the writ is not shown by affidavit or other evidence, a hearing is not required, even when the allegations are ones that are cognizable in a habeas proceeding. *Philyaw v. Kelley*, 2015 Ark. 465, 477 S.W.3d 503 (2015). Petitioner has failed to state probable cause for issuance of the writ because he has not presented a viable claim. Therefore, his request for a hearing is denied.

RULING

The allegations raised by the petitioner do not establish probable cause that the trial court lacked jurisdiction or that the commitment is invalid on its face. The trial court had personal jurisdiction over the petitioner and jurisdiction over the subject matter, thus, had the authority to render the judgment.

The requested relief is denied, and the petition is hereby **DISMISSED**.

IT IS SO ORDERED, this 26 day of April, 2017.



JODI RAINES DENNIS
CIRCUIT JUDGE
40CV-17-46-5