

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

KENNETH WILLIAMS
Inmate # 957

PETITIONER

v.

No. 40CV 17-46-5

STATE OF ARKANSAS

RESPONDENT

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

On this day comes on for consideration the habeas corpus petition filed on April 21, 2017.

From the examination of the pleadings and review of applicable law, the Court finds as follows:

HISTORY

On August 30, 2000, the petitioner was convicted of capital murder and was sentenced to death.

CLAIM

Petitioner alleges that he is intellectually disabled which renders his death sentence illegal and prohibits his execution.

HABEAS CORPUS 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[.]" The petitioner must plead either the facially invalidity or the lack of jurisdiction and make a showing, by affidavit or other evidence, of 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, 840 S.W.2d 611 (1992).

FILED

APR 24 2017

16:50

CINDY GLOVER, CIRCUIT CLERK
LINCOLN COUNTY, ARKANSAS

PETITION

The petition is defective on its face and must be dismissed on either of two insufficiencies. Petitioner failed to direct his petition to the proper party. Arkansas Code Annotated § 16-112-105(b)(1) (Repl.2006) requires that “[t]he writ shall be directed to the person in whose custody the prisoner is detained[.]” The person having custody of the prisoner may be designated in the petition by either his or her name or office. Petitioner named the State of Arkansas as respondent. The petitioner failed to direct the writ to the custodian of his person. *Mitchell v. Norris*, No. 5:07CV00021 HDY, 2007 WL 1040997, (E.D. Ark. Apr. 6, 2007). The petitioner is in the custody of Wendy Kelley, Director of the Arkansas Department of Correction. The petitioner failed to attach a copy of his judgment and commitment order or provide a legal excuse for the omission rendering the petition defective. *In re Beard*, 4 Ark. 9 (1842); *Ex Parte Royster*, 6 Ark. 28 (1845).

MENTAL DIFFICIENCIES

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). Execution of a mentally deficient criminal is “cruel and unusual punishment” under the Eighth Amendment of the U.S. Constitution. Ark. Code Annotated § 5-4-618 addresses mental retardation and its effect on a defendant charged with a capital offense. Prior to trial a defendant shall raise the sentencing provision of mental retardation. The petitioner acknowledges in his petition that the issue of mental deficiencies 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.

Petitioner asks the Court to rule that he is intellectually challenged, declare his sentence of death illegal and order resentencing. In support of his argument, Petitioner asks the Court to apply a theory developed in 1984 by James Flynn, a political philosopher and IQ researcher. In essence

the Flynn theory applies a statistical approach to lowering IQ test scores. Petitioner reinterprets his IQ scores in an effort to lower the scores until they fall into the mentally deficient category.

The theory Flynn espouses has not resulted in changes to the testing measures. Although the scientific experts in the field of psychiatry have not adopted the Flynn theory or changed the test parameters, petitioner is asking the Court to do so. The Court declines to accept the theory, abandon a sanctioned testing method adopted by psychiatric associations, and create a new standard. The multiple tests administered to the petitioner resulted in consistent findings that petitioner is not intellectually challenged and does not meet the legal definition of mental retardation. The Flynn effect reductions as reflected in the tables in the petition do not establish probable cause. Six of the seven IQ tests remained above the threshold score. The petitioner has not presented probable cause that his death sentence is illegal based on an intellectual disability.

INEFFECTIVE ASSISTANCE OF COUNSEL

A petition for a 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). Petitioner seeks relief by alleging ineffective assistance of counsel of his trial counsel, appellate counsel and the attorney who filed his Rule 37 Petition. A claim of ineffective assistance of counsel is not cognizable in a habeas petition.

For analysis purposes, the Court will consider petitioner's argument. Mere conclusions cannot support a finding of ineffective assistance of counsel. Petitioner fails to provide any evidence to support his claim. It appears he expects the Court to opine that all of his previous attorneys were ineffective because the Courts have refused to accept his theory.

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

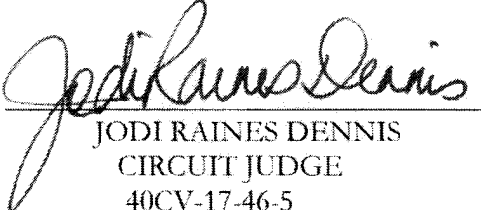
proceeding. *Philyaw v. Kelley*, 2015 Ark. 465, 477 S.W.3d 503 (2015). While the petition may have stated one cognizable ground for habeas relief, petitioner failed to state probable cause for issuance of the writ, and his request for a hearing is denied. *Lumley v. State*, 2011 Ark. 265 (2011).

RULING

The petition is dismissed as facially defective. The petition is subject to dismissal, if the defects are corrected, in that 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. The trial court had personal jurisdiction over petitioner and jurisdiction over the subject matter, thus, had the authority to render the judgment.

The petition is hereby DISMISSED.

IT IS SO ORDERED this 24 day of April, 2017.



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

cc: Debra Anne Czuba
Arkansas Bar # 2008271
Deborah_A_Czuba@fd.org