

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT IN
AND FOR SUMTER COUNTY, FLORIDA**

GERALD DEAN YOUNG,

Petitioner,

vs.

CASE NO.: 2021-CA-561

MARK INCH, THE STATE OF FLORIDA,

Respondent.

**ORDER ON PETITION FOR WRIT OF HABEAS CORPUS
AND ORDER ON MOTION TO AMEND**

THIS COURT having considered Petitioner’s Petition for Writ of Habeas Corpus, filed on October 7, 2021, and Petitioner’s Motion to Amend, filed on December 6, 2021, finds as follows:

A. Petitioner asserts the following grounds for a Writ of Habeas Corpus; (1) Petitioner was sentenced under an indefinite sentencing statute; (2) The FDOC and COOR are in violation of the prohibition against indefinite imprisonment; and (3) The sentencing judgment has expired due to lack of execution by the FDOC and COOR. In the Motion to Amend, Petitioner asserts additional arguments regarding the grounds asserted.

B. A Petition for Writ of Habeas Corpus shall be granted when any person shows by affidavit or evidence probable cause to believe that he or she is detained without lawful authority. See Section 79.01, Florida Statutes (2006). “The burden of proof in a habeas corpus proceeding is on the petitioner, who must back up his allegations with evidence.” Mattern v. Fla Parole Com'n, 707 So.2d 806, 808 (Fla. 4th DCA 1998) (citing Kohler v. Sandstrom, 305 So.2d 76, 77 (Fla. 3d DCA 1974)). “General allegations are insufficient to demonstrate entitlement to relief.” Id. (citing Reaves v. State, 593 So.2d 1150, 1151 (Fla. 1st DCA 1992)).

C. When a petitioner attacks the validity of the conviction by raising issues relating

to the trial or the propriety of the plea, jurisdiction lies with the trial court that imposed the sentence and rendered the judgment of conviction. Richardson v. State, 918 So.2d 999, 1001 (Fla. 5th DCA 2006); Collins v. State, 859 So.2d 1244 (Fla. 5th DCA 2005). Habeas proceedings may not be used to present issues that should have been raised in a Rule 3.850 motion or claims that should have been raised on appeal, nor may it be used to obtain a second appeal. Id. at 1002-1003. The proper disposition for such claims is dismissal, rather than denial. McLeod v. State, 899 So.2d 506 (Fla. 5th DCA 2005).

D. In this case, Petitioner is asserting a claim that should have been presented in a Rule 3.850 motion and/or on appeal.

Based upon the foregoing, it is hereby

ORDERED AND ADJUDGED as follows:

1. Petitioner's Petition for Writ of a Habeas is hereby DISMISSED.
2. Petitioner's Motion to Amend is hereby GRANTED and Petitioner's additional arguments were considered.

DONE AND ORDERED in Chambers, Bushnell, Sumter County, Florida, on this 21st day of December 2021.



Mary P. Hatcher
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to the following by U.S. Mail, this 21st day of December 2021.

Gerald Dean Young, DC# 363305
Sumter Correctional Institution
9544 County Road 476B
Bushnell, FL 33513-0667



Judicial Assistant