ARKANSAS SUPREME COURT

No. CR 07-527

	Opinion Delivered **December 13, 2007**
RALPH DOUTHITT Appellant	PRO SE MOTION TO FILE REPLY BRIEF AND SUPPLEMENTAL ADDENDUM [CIRCUIT COURT OF INDEPENDENCE COUNTY, CR 95-58, HON. JOHN DAN KEMP, JUDGE]
v.	
STATE OF ARKANSAS Appellee	APPEAL DISMISSED; MOTION MOOT

PER CURIAM

In 1995, appellant Ralph Douthitt was convicted by a jury of multiple counts of felony rape, incest and violation of a minor and sentenced to 174 years' imprisonment. We affirmed. *Douthitt v. State*, 326 Ark. 794, 935 S.W.2d 241 (1996).

In 2006, appellant filed in the trial court a pro se petition pursuant to Act 1780 of 2001, as amended by Act 2250 of 2005 and codified as Ark. Code Ann. §§16-112-201–16-112-208 (Repl. 2006). The act provides that a writ of habeas corpus can issue based upon new scientific evidence proving a person actually innocent of the offense or offenses for which he or she was convicted. The trial court denied the petition and this court dismissed the appeal on the ground that it was clearly without merit. *Douthitt v. State*, 366 Ark. 579, ___ S.W.3d ___ (2007) (per curiam).

In 2007, appellant filed in the trial court a pro se "second or successive petition to vacate and/or set aside judgment" pursuant to Act 1780. The trial court denied the petition without a hearing, and appellant has lodged an appeal here from the order.

Now before us is appellant's pro se motion to file a reply brief and supplemental addendum.

We need not consider the motion as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward. Accordingly, we dismiss the appeal and hold the motion moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam).

Act 1780 involves scientific testing of evidence introduced at trial. *See* Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006) and sections 16-112-201–12-112-208; *see also Echols v. State*, 350 Ark. 42, 84 S.W.3d 424 (2002) (per curiam) (decision under prior law). A number of predicate requirements must be met under Act 1780 before a circuit court can order that testing be done. *See* sections 16-112-201–16-112-203.

Here, the trial court dismissed appellant's Act 1780 petition pursuant to section 16-112-205(d), which states:

> The court may summarily deny a second or successive petition for similar relief on behalf of the same petitioner and may summarily deny a petition if the issues raised in it have previously been decided by the Arkansas Court of Appeals or the Arkansas Supreme Court in the same case.

In the previous petition filed under the act, appellant claimed that the evidence used to convict him was obtained as a result of an unconstitutional search and seizure. In the instant petition, appellant sought to use scientific testing to prove that the search conducted by the police was initiated prior to authorization of the search by the victim and was unconstitutional. Because appellant has previously raised the issue of an unconstitutional search and seizure in his prior Act 1780 petition and has made the same argument in the instant petition, the trial court did not err in denying a successive petition for similar relief.

Moreover, this argument presents a basis for summary denial of the Act 1780 petition. Claims pertaining to the admissibility of evidence are not within the purview of a proceeding under the statute. Also, appellant's evidentiary argument does not involve actual scientific testing of specific evidence that was introduced at trial to secure appellant's conviction, pursuant to section 16-112-202 (1).

Appeal dismissed; motion moot.