

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

ELIJAH NELSON,

Appellant,

v.

Case No. 5D16-1094

DEPARTMENT OF CORRECTIONS  
AND STATE OF FLORIDA,

Appellees.

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Opinion filed October 10, 2016

Appeal from the Circuit Court  
for Orange County,  
Keith F. White , Judge.

Elijah Nelson, Carrabelle, pro se.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Allison Leigh Morris,  
Assistant Attorney General, Daytona  
Beach, for Appellee, State of Florida.

No appearance for other Appellee.

PER CURIAM.

Elijah Nelson appeals the dismissal of his petition for writ of habeas corpus. The trial court determined that because Nelson is presently incarcerated in Franklin County, he could not seek habeas corpus relief in Orange County. Based on the nature of the habeas corpus relief sought by Nelson, we conclude that the petition was properly filed in

Orange County. Therefore, we reverse for the trial court to consider the merits of the petition.

In *Gisi v. State*, 119 So. 3d 534, 535 (Fla. 5th DCA 2013), we addressed the circumstances regarding the appropriate circuit court to consider a habeas corpus petition:

The circuit court of the county in which a defendant is incarcerated has jurisdiction to consider a petition for writ of habeas corpus when the petition involves an issue regarding the prisoner's incarceration. *Johnson v. State*, 947 So. 2d 1192, 1192–93 (Fla. 3d DCA 2007). However, a habeas petition attacking the validity of a conviction and asserting issues related to the trial court proceedings, must be brought in the circuit court of the county that rendered the judgment of conviction. *Galloway v. State*, 931 So. 2d 136, 136–37 (Fla. 5th DCA 2006).

Here, Nelson's petition attacks the validity of his conviction and the information filed against him in Orange County. As such, the petition was properly filed in the circuit court of Orange County, and the trial court there erred when it dismissed the petition rather than ruling on the merits. Therefore, we reverse the order on appeal and remand for the trial court to address the merits of Nelson's petition.<sup>1</sup>

REVERSED and REMANDED.

LAWSON, C.J., SAWAYA and LAMBERT, JJ., concur.

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<sup>1</sup> We express no position on the merits of the petition.