

# ARKANSAS SUPREME COURT

No. 06-566

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered    October 12, 2006

ALTON SCOT MOODY  
Appellant

*PRO SE* MOTION FOR  
APPOINTMENT OF COUNSEL  
[CIRCUIT COURT OF HOT SPRING  
COUNTY, CV-2006-60, HON. PHILLIP  
H. SHIRRON, JUDGE]

v.

LARRY NORRIS, DIRECTOR,  
ARKANSAS DEPARTMENT OF  
CORRECTION  
Appellee

APPEAL DISMISSED; MOTION MOOT

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## PER CURIAM

In 2003, judgment was entered reflecting that Alton Scot Moody had been found guilty by the Circuit Court of Randolph County in a trial to the bench for possession of drug paraphernalia with intent to manufacture (methamphetamine) and a sentence of 120 months' imprisonment was imposed. In 2006, appellant filed a petition for writ of *habeas corpus* in the Circuit Court of Hot Spring County, which was denied. Appellant, proceeding *pro se*, has lodged an appeal in this court from that order.

Now before us is appellant's *pro se* motion for appointment of counsel. We need not consider this motion as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward because he failed to file the petition in the proper court. Accordingly, we dismiss the appeal and hold the motion moot. This court has consistently held that 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. *See 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*).

Any petition for writ of *habeas corpus* is properly addressed to the circuit court in the county in which the petitioner is held in custody, unless the petition is filed pursuant to Act 1780 of 2001.<sup>1</sup> Arkansas Code Annotated §16-112-105 (Repl. 2006) requires certain procedural requirements be met when seeking a court to issue a writ of *habeas corpus*. The writ must be directed to the person in whose custody the prisoner is detained. Additionally, the writ should be issued by a court that has personal jurisdiction over the defendant. Otherwise, although a court may have subject-matter jurisdiction to issue the writ, a writ of *habeas corpus* cannot be returned to the court issuing the writ; a court does not have personal jurisdiction to issue and make returnable before itself a writ of *habeas corpus* where the petitioner is in another county. *See, e.g., State Dept. of Public Welfare v. Lipe*, 257 Ark. 1015, 521 S.W.2d 526 (1975); *Johnson v. McClure*, 228 Ark. 1081, 312 S.W.2d 347 (1958); *State v. Ballard*, 209 Ark. 397, 190 S.W.2d 522 (1945).

In the present matter, appellant is in the custody of the Conway County jail in Morrilton, which is located in Conway County. However, appellant filed his petition for writ of *habeas corpus* in the Circuit Court of Hot Spring County. The Circuit Court of Hot Spring County does not have personal jurisdiction over appellant and cannot release a prisoner who is not in custody within that county. *See Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991). Therefore, the Circuit Court of Hot Spring County cannot issue a writ of *habeas corpus* that would be returnable to the court to effect appellant's release, and appellant cannot obtain the specific relief he seeks in this

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<sup>1</sup>Act 1780 of 2001, codified at Ark. Code Ann. §§ 16-112-201–16-112-207 (Repl. 2006), provides for the filing of a petition for writ of *habeas corpus* in the trial court if certain grounds are raised. Had appellant's petition for writ of *habeas corpus* been filed pursuant to Act 1780, appellant should have filed his petition in the Circuit Court of Randolph County.

matter.

Appeal dismissed; motion moot.