

# ARKANSAS SUPREME COURT

No. 06-953

DAVID KELLY  
Appellant

v.

LARRY NORRIS, DIRECTOR,  
ARKANSAS DEPARTMENT OF  
CORRECTION  
Appellee

Opinion Delivered      **October 11, 2007**

PETITION FOR REHEARING  
[CIRCUIT COURT OF JACKSON  
COUNTY, CV 2006-55, HON.  
HAROLD S. ERWIN, JUDGE]

PETITION TREATED AS MOTION  
FOR RECONSIDERATION OF  
DISMISSAL OF APPEAL AND  
DENIED.

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## PER CURIAM

Appellant David Kelly is a prisoner incarcerated in the Arkansas Department of Correction. Appellant was incarcerated in Jackson County when he filed a pro se petition for writ of habeas corpus. That petition was denied, and appellant, represented by counsel, brought an appeal of that order in this court. We dismissed the appeal because appellant was no longer incarcerated in Jackson County. *Kelly v. State*, 06-953 (Ark. May 31, 2007) (per curiam). Appellant now brings what is styled as a petition for rehearing. As the appeal was dismissed, we treat the pleading as a motion for reconsideration of the dismissal of the appeal.

Appellant urges that we have misinterpreted our case law, contending that the Jackson County Circuit Court still has jurisdiction to determine whether the writ should issue, even though it does not have jurisdiction to determine whether a prisoner held in another county should be released. Appellant argues that our holding would permit the State to defend against a petition for writ of

habeas corpus by moving the prisoner. While appellant states that he had no control over his move outside of the jurisdiction of the Jackson County court because it was effected by the Department of Correction, he does not, however, allege that the move by the State in this instance was actually motivated for the purpose of defeating this court's jurisdiction.

As noted, appellant does not contest that he is no longer within the jurisdiction of the Jackson County Circuit Court. We do not agree with appellant's interpretation of our cases as requiring that a court have only subject-matter jurisdiction in order to issue the writ, whether or not it has personal jurisdiction over the prisoner so as to effect the remedy and require return of the writ to that court. In essence, he asks that we overrule our decision in *Lukach v. State*, 369 Ark. 475, \_\_\_ S.W.3d \_\_\_ (2007) (per curiam), that holds the circuit court must have both subject-matter jurisdiction and personal jurisdiction so that the writ is returnable before that court. We decline to do so.

Appellant does not allege that the State has in fact acted improperly, nor does he provide any factual basis for such an allegation. He contends only that our decision leaves open the possibility that the State could act to overcome our jurisdiction and move a prisoner in order to defeat his petition. There is therefore no need for us to address the situation where a party intentionally attempts to defeat the jurisdiction of the court, and we decline to do so. As appellant has stated no basis for this court to reconsider our previous decision, the motion is denied.

Petition treated as motion for reconsideration of dismissal of appeal and denied.