

ARKANSAS SUPREME COURT

No. 07-1204

Opinion Delivered April 3, 2008

GREGORY FISHER
Appellant

v.

GAYLON LAY
Appellee

PRO SE MOTION TO HOLD APPEAL
IN ABEYANCE AND FOR
EXTENSION OF TIME TO FILE
REPLY BRIEF [CIRCUIT COURT OF
LINCOLN COUNTY, LCV 2007-68,
HON. ROBERT H. WYATT, JR.,
JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 2002, appellant Gregory Fisher was found guilty by a jury of possession of cocaine with intent to deliver and possession of marijuana with intent to deliver. He was sentenced to an aggregate term of 660 months' imprisonment and fined \$150,000. The Arkansas Court of Appeals affirmed. *Fisher v. State*, 84 Ark. App. 318, 139 S.W.3d 815 (2004). In 2007, appellant, who was and is incarcerated in Lincoln County, filed a petition for writ of habeas corpus in the circuit court in that county.¹ The circuit court denied the petition without a hearing and appellant, proceeding pro se, has lodged an appeal here from the order.

Now before us is appellant's pro se motion to hold the appeal in abeyance and for an extension of time to allow appellant to file his reply brief in the instant matter. As appellant could not be successful on appeal, the appeal is dismissed and the motion is moot. An appeal from an

¹Appellee is the head warden of the Cummins Unit of the Arkansas Department of Correction.

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. *Lukach v. State*, 369 Ark. 475, ___ S.W.3d ___ (2007) (per curiam).

Appellant's sole argument in the petition filed in the circuit court was that the trial court lacked in personam jurisdiction over appellant and subject-matter jurisdiction over the underlying criminal matter. The basis for his argument was that his trial attorney was not licensed to practice law in Arkansas. The principal issue in a habeas corpus proceeding is whether the petitioner is detained without lawful authority. Ark. Code Ann. § 16-112-103 (Repl. 2006); *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). The burden is on a petitioner in a habeas corpus petition under section 16-112-103 to establish that the trial court lacked jurisdiction or that the commitment was invalid on its face; otherwise, there is no basis for a finding that a writ of habeas corpus should issue. *Id.*

Previously, in a petition for relief pursuant to Ark. R. Crim. P. 37.1, appellant raised the issue of whether he was denied his Sixth Amendment right to counsel based upon the licensing status of his trial counsel to practice law in Arkansas. We held that he was not. *Fisher v. State*, 364 Ark. 216, 217 S.W.3d 117 (2005). Here, in the court below, appellant reargued the same issue, and claimed that as a result, his commitment was unlawful. Appellant made no convincing argument that the trial court lacked jurisdiction or that the commitment was invalid on its face. Therefore, appellant failed to demonstrate that a writ of habeas corpus should issue.

Appeal dismissed; motion moot.