ARKANSAS SUPREME COURT

No. 07-813

PHILIP EUGENE PARMLEY
  Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
  Appellee

Opinion Delivered   **February 12, 2009**

APPEAL FROM THE CIRCUIT COURT
OF JACKSON COUNTY, CV 2007-116,
HON. HAROLD S. ERWIN, JUDGE

AFFIRMED.

PER CURIAM

In 2004, a jury in Garland County Circuit Court found appellant Philip Eugene Parmley, also known as Phillip Eugene Parmley, guilty of possession of drug paraphernalia with intent to manufacture methamphetamine and sentenced him to 480 months' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed. *Parmley v. State*, CACR 04-692 (Ark. App. Mar. 2, 2005). This court dismissed appellant's appeal of the dismissal of his pro se petition for postconviction relief. *Parmley v. State*, CR 06-204 (Ark. Apr. 27, 2006) (per curiam). Appellant next filed a pro se petition for writ of habeas corpus in the circuit court in the county where he is incarcerated, and the circuit court dismissed the petition. Appellant brought this appeal of that order and we remanded for further findings of fact and conclusions of law. *Parmley v. Norris*, 07-813 (Ark. Oct. 9, 2008) (per curiam).

In our previous opinion, we determined the trial court had erred to the extent that it found that appellant had failed to state facts sufficient for a claim cognizable in a proceeding for the writ

because, although appellant had not set forth facts to support a claim that the trial court lacked subject-matter jurisdiction, the petition did provide facts in support of a claim that the trial court lacked territorial jurisdiction. We remanded for finding of facts as to whether or not the offense committed was limited to a single county or was committed in multiple counties.

The circuit court has now returned its findings of fact and conclusions of law. The court determined that the offense was committed in both Hot Spring and Garland county, and that the entrance to the gated community where the offense was committed, which appellant passed through before he was arrested in Hot Spring County, was in Garland County. Arkansas Code Annotated § 16-88-108 (Repl. 2005), the applicable statute, provided for jurisdiction in either county where the offense was committed in two or more counties.

The burden is on a petitioner in a habeas proceeding to establish that the trial court lacked jurisdiction. *See Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). The petitioner who alleges the lack of jurisdiction must make a "showing by affidavit or other evidence, [of] probable cause to believe" he is illegally detained. *Id.* at 221, 226 S.W.3d at 798-799. Here, appellant failed to make the requisite showing because the evidence presented at trial indicated that the offense occurred in Garland County as well as in Hot Spring County.[1]

This court does not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous or clearly against the preponderance of the evidence. *See Greene v. State*, 356

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[1] The court's findings of fact and conclusions of law additionally indicated that appellant waived his right to contest territorial jurisdiction because he did not raise an objection to territorial jurisdiction during his trial. We have previously held that a question of local jurisdiction may be waived in a criminal case within the territorial boundaries of the judicial district. *Davis v. Reed*, 316 Ark. 575, 873 S.W.2d 524 (1994). However, we need not address whether there was an appropriate waiver of the issue because it is clear that appellant did not meet his burden to demonstrate that territorial jurisdiction was not proper in Garland County.

Ark. 59, 146 S.W.3d 871 (2004). The circuit court did not err in declining to grant the writ. Appellant's petition did not establish probable cause to believe that appellant's possession of drug paraphernalia was not committed in Garland County, as well as Hot Spring County. Accordingly, we affirm denial of the writ.

Affirmed.

Brown, J., not participating.