

# ARKANSAS SUPREME COURT

No. 08-700

BARRY G. AARON  
Petitioner

v.

LARRY NORRIS; STATE OF  
ARKANSAS  
Respondents

Opinion Delivered      October 9, 2008

PRO SE MOTION FOR BELATED  
APPEAL [CIRCUIT COURT OF HOT  
SPRING COUNTY, CV 2007-160, HON.  
PHILLIP H. SHIRRON, JUDGE]

MOTION DENIED.

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## PER CURIAM

Now before us is petitioner Barry G. Aaron's pro se motion for belated appeal pursuant to Arkansas Rule of Appellate Procedure—Criminal 2(e). Therein, he seeks to proceed with the appeal of the trial court's order denying his petition for writ of habeas corpus alleging that he was being detained without lawful authority, pursuant to Arkansas Code Annotated § 16-112-103 (Repl. 2006). We need not consider petitioner's reasons for failing to perfect the appeal because it is clear that petitioner could not prevail if permitted to go forward. *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam).

Any petition for writ of habeas corpus to effect the release of a prisoner is properly addressed to the circuit court in the county in which the prisoner is held in custody, unless the petition is filed pursuant to Act 1780 of 2001.<sup>1</sup> *Id.* A circuit court does not have the authority to release a prisoner

<sup>1</sup>Act 1780 of 2001, as amended by Act 2250 of 2005, and codified as Arkansas Code Annotated §§ 16-112-201 to -208 (Repl. 2006), provides that a writ of habeas corpus can issue based upon new scientific evidence proving a person actually innocent of the offense or offenses for which he or she was convicted.

not in custody within that court's jurisdiction pursuant to a writ of habeas corpus. *Id.*

Petitioner was incarcerated in Hot Spring County when he filed the petition for writ of habeas corpus, but he is now incarcerated in Jefferson County. Hot Spring County, therefore, lacks personal jurisdiction over petitioner, and it could not grant the relief requested. Accordingly, petitioner could not prevail on the petition for writ of habeas corpus pursuant to section 16-112-103.

As a second basis for relief, petitioner contended that certain evidence presented at trial involving the fluids retrieved from the victim was tested using an inadequate method and should have been excluded from evidence. He averred that another testing method would have indicated unequivocally that petitioner's semen was not present and thereby proved his actual innocence.

To the extent that petitioner was seeking additional scientific testing, such a request is only cognizable under Act 1780 of 2001. A petition for writ of habeas corpus under Act 1780 is properly filed in the court in which the conviction was entered here, Miller County, and not in the county in which a prisoner is incarcerated. Ark. Code Ann. § 16-112-201(a); *Lukach, supra*. Petitioner's criminal trial was not conducted in Hot Spring County, and this argument presents no basis for relief.

Motion denied.

Gunter, J., not participating.