

SUPREME COURT OF ARKANSAS

No. 10-958

DAN HUFFMAN
APPELLANT

v.

RAY HOBBS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
APPELLEE

Opinion Delivered October 6, 2011

PRO SE APPEAL FROM THE
LINCOLN COUNTY CIRCUIT
COURT,
LCV 2010-55, HON. JODI RAINES
DENNIS, JUDGE

APPEAL DISMISSED.

PER CURIAM

Appellant Dan Huffman appeals from the order of the Lincoln County Circuit Court entered August 24, 2010, dismissing his pro se petition for writ of habeas corpus. For reversal, appellant challenges the trial court's subject-matter jurisdiction to impose the firearm-enhancement statute in his criminal case. We dismiss the appeal.

On April 11, 1990, appellant was convicted of second-degree murder and was sentenced as a habitual offender to fifty years' imprisonment. Appellant was sentenced pursuant to Arkansas Code Annotated section 5-4-505 (Repl. 1989), which provided for an extended term of imprisonment for fifteen years when a defendant employed a firearm in furtherance of the felony.¹ We affirmed the conviction and sentence on direct appeal in *Huffman v. State*, CR 90-245 (Ark. March 11, 1991) (unpublished per curiam). Appellant filed a petition for writ of habeas corpus in the circuit court in the county where he was

¹This code section was repealed in 1994.

incarcerated, alleging that the trial court lacked subject-matter jurisdiction to enhance his sentence, pursuant to section 5-4-505 and that the order improperly reflected the enhanced sentence. The circuit court denied appellant's petition for writ of habeas corpus, and appellant brings his appeal from that order.

An appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Waller v. Norris*, 2011 Ark. 168 (per curiam); *Buckhanna v. Hobbs*, 2011 Ark. 119 (per curiam); *Davis v. State*, 2011 Ark. 6 (per curiam); *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, codified at Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006), in which case the petition is properly filed pursuant to Arkansas Code Annotated section 16-112-201(a) in the court where the judgment of conviction was entered. A circuit court does not have jurisdiction to release on a writ of habeas corpus a prisoner not in custody in that court's jurisdiction. *Waller*, 2011 Ark. 168; *Buckhanna*, 2011 Ark. 119; *Hill v. State*, 2010 Ark. 102 (per curiam); *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam) (citing *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991)).

Here, the records of the Arkansas Department of Correction verify that appellant is no longer incarcerated in Lincoln County. Thus, we do not reach the merits of appellant's

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argument and dismiss the appeal because the Lincoln County Circuit Court can no longer grant the relief requested by appellant. *Waller*, 2011 Ark. 168; *Buckhanna*, 2011 Ark. 119. Even if appellant's petition had merit and the circuit court erred in dismissing it, appellant cannot now prevail on appeal. *Waller*, 2011 Ark. 168; *Buckhanna*, 2011 Ark. 119.

Appeal dismissed.