

Cite as 2018 Ark. 39
SUPREME COURT OF ARKANSAS
No. CV-17-769

MARCUS FIELDS

APPELLANT

V.

WENDY KELLEY, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered February 8, 2018

PRO SE MOTIONS FOR
APPOINTMENT OF COUNSEL AND
FOR PRODUCTION OF DOCUMENTS
[LEE COUNTY CIRCUIT COURT, NO.
39CV-17-70]

APPEAL DISMISSED; MOTIONS MOOT.

RHONDA K. WOOD, Associate Justice

Appellant Marcus Fields appeals the Lee County Circuit Court’s denial of Fields’s motion to refile a habeas petition. Because Fields’s appeal is not from an appealable order and it is clear from the record that he cannot prevail on appeal, we need not consider the merits of the motions. We dismiss the appeal, and Fields’s motions are moot.

Fields filed a pro se petition for writ of habeas corpus pursuant to Arkansas Code Annotated sections 16-112-101 to -123 (Repl. 2016). The circuit court dismissed the habeas petition on July 28, 2017, finding that Fields was sentenced within the range of penalties for rape, a class Y felony. Fields subsequently filed a motion to refile a habeas petition, and the circuit court denied the motion on August 11, 2017. On August 16, 2017, Fields filed a notice of appeal “from the final order of the circuit court of Lee County entered on August 14[], 2017.”

Fields's appeal was from the denial of a motion to refile a habeas petition, not a motion for reconsideration. He instead contended that he wished to refile his writ of habeas petition to pursue relief on two separate underlying criminal cases in 39CR-11-29 (a conviction and sentence for rape) and 39CR-11-362 (a conviction and sentence for first-degree sexual abuse). The circuit court's dismissal of his initial writ only addressed Fields's conviction and sentence in 39CR-11-29. As a result, Fields sought the court's permission to refile in order to pursue habeas relief in both of his underlying criminal cases.

Rule 2 of the Arkansas Rules of Appellate Procedure–Civil (2016) lists the orders from which an appeal may be taken. Generally, for an order to be appealable, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. *Petrus v. Nature Conservancy*, 330 Ark. 722, 957 S.W.2d 688 (1997). An appeal will be premature if the decision does not, from a practical standpoint, conclude the merits of the case. *See Doe v. Union Pac. R.R.*, 323 Ark. 237, 914 S.W.2d 312 (1996).

Fields is mistaken in believing he must receive permission from the circuit court to refile a writ of habeas petition. *See Renshaw v. Norris*, 337 Ark. 494, 989 S.W.2d 515 (1999) (There are no time limits on when a petitioner must file a writ of habeas corpus based on an illegal sentence, and a petitioner cannot waive a court's lack of subject-matter jurisdiction.). The circuit court's denial of Fields's motion was not a final judgment that dismissed the parties from the court, discharged them from the action, or concluded their rights to the subject matter in controversy, and it does nothing to preclude Fields from

filing a second petition for writ of habeas corpus. As there was no final, appealable order entered in this case, it is clear that Fields could not prevail if the matter were allowed to proceed, and the motions are thereby rendered moot.

Appeal dismissed; motions moot.

HART, J., dissents.