

Cite as 2011 Ark. 168

SUPREME COURT OF ARKANSAS

No. 09-623

ROMARIO VERMOND WALLER
Appellant

v.

LARRY NORRIS
Appellee

Opinion Delivered April 14, 2011

PRO SE MOTION TO SUPPLEMENT
RECORD [CIRCUIT COURT OF
LEE COUNTY, CV 2009-34, HON.
RICHARD PROCTOR, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

Appellant Romario Vermond Waller, an inmate incarcerated in the Arkansas Department of Correction at the East Arkansas Regional Unit in Lee County, filed a pro se petition for writ of habeas corpus in the Lee County Circuit Court. The court denied the petition, and appellant lodged an appeal from the order in this court. Approximately five months after the appeal was lodged, appellant gave notice to this court by means of a letter that he had been transferred to the Super Maximum Security Unit located in Lincoln County. The Department of Correction records verify the change in location.

Appellant, who remains incarcerated in Lincoln County, now seeks by pro se motion to supplement the record on appeal. We do not reach the merits of the motion and dismiss the appeal because the Lee County Circuit Court can no longer grant the relief requested by appellant. *Buckhanna v. Hobbs*, 2011 Ark. 119 (per curiam).

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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. *Buckhanna*, 2011 Ark. 119; *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 §§ 16-112-201 to -208 (Repl. 2006), in which case the petition is properly filed pursuant to Arkansas Code Annotated § 16-112-201(a) in the court where the judgment of conviction was entered. Appellant, who is incarcerated by virtue of judgments of conviction entered in the Union County Circuit Court, did not invoke Act 1780.

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. *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)). Regardless of the merits of appellant's petition, appellant cannot now prevail on appeal. Accordingly, the appeal is dismissed, and the motion to supplement the record is moot.

Appeal dismissed; motion moot.