

# ARKANSAS SUPREME COURT

No. CR 05-813

NOT DESIGNATED FOR PUBLICATION

EDWARD EUGENE MAYBERRY, JR.  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered May 4, 2006

*PRO SE* APPEAL FROM THE CIRCUIT  
COURT OF HOT SPRING COUNTY,  
CR 2000-209-2, HON. PHILLIP H.  
SHIRRON, JUDGE

APPEAL DISMISSED

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## PER CURIAM

In 2002, a jury found appellant Edward Eugene Mayberry, Jr. guilty of aggravated robbery and kidnapping. Appellant received an aggregate sentence of 240 months' imprisonment on the charges. The Arkansas Court of Appeals affirmed the judgment. *Mayberry v. State*, CACR 01-900 (Ark. App. August 28, 2002). Appellant filed a petition for writ of *habeas corpus* in Hot Spring Circuit Court under Ark. Code Ann. § 16-112-101 – 16-112-123 (1987). The circuit court denied the petition, and appellant now brings this appeal of that order.

Although appellant raises claims of actual innocence in his petition, and, in its brief, the State discusses Act 1780 of the 2001 Acts of Arkansas, codified as Ark. Code Ann. § 16-112-201–16-112-207 (Repl. 2006), appellant has raised no claim under Act 1780 in his petition. The petition does not reference the Act or request scientific testing. Appellant does request issuance of the writ under section 16-112-103, and appellant appears to have properly filed his petition in the circuit court of the county in which he was incarcerated. However, appellant is no longer incarcerated in that

county.

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. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*). In this case, the circuit court does not have jurisdiction to release appellant, as he is not now in custody within the court's jurisdiction. While appellant may have been in custody in Hot Spring County at the time the petition for writ of *habeas corpus* was filed, the filing does not confer jurisdiction on the circuit court to issue the writ when he is not currently in custody in that county. We do not reach the merits of appellant's claims, as even were petitioner successful in an appeal of the petition, the circuit court could not grant the remedy requested. Accordingly, therefore, we now dismiss the appeal.

Appeal dismissed.