

ARKANSAS SUPREME COURT

No. CR 07-1168

CHRISTOPHER LEAVENS
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered January 24, 2008

PRO SE MOTIONS FOR
DUPLICATION OF BRIEF AT PUBLIC
EXPENSE AND FOR WAIVER OF
REQUIREMENT TO BIND BRIEF
[CIRCUIT COURT OF FULTON
COUNTY, CR 96-35, HON. TIMOTHY
M. WEAVER, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

On August 28, 2007, appellant Christopher Leavens, an inmate incarcerated in the Arkansas Department of Correction, filed a petition for writ of habeas corpus in the Circuit Court of Fulton County.¹ The circuit court dismissed the petition, and appellant has lodged an appeal from that order in this court.

Appellant has tendered his brief-in-chief and now seeks duplication of the brief at public expense and a waiver of the requirement that the brief be bound. As it is clear that appellant could not be successful on appeal, the appeal is dismissed and the motions are moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is

¹The judgment and commitment order entered on May 8, 1997, reflected that appellant entered a plea of guilty to breaking or entering, and was sentenced to twenty-four months' imprisonment, to be served concurrently with two other criminal sentences. He was incarcerated in 2007 when the habeas petition was filed by virtue of a later criminal conviction in an apparently unrelated case.

clear that the appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam).

We need not address whether habeas would lie to challenge a judgment of conviction in which the sentence has been served inasmuch as it is clear from the record that appellant was in custody in Lincoln County when he filed the petition for writ of habeas corpus. We dismiss the appeal because the Circuit Court of Fulton County could not grant the relief sought by appellant.

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 2001.² *Lukach v. State*, 369 Ark. 475, ___ S.W.3d ___ (2007) (per curiam). 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, supra* (citing *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991)). Here, appellant did not invoke Act 1780, and the Fulton County Circuit Court did not have personal jurisdiction to release a petitioner who was held in another county.

Appeal dismissed; motions moot.

²Act 1780 of 2001, as amended by Act 2250 of 2005 and codified at Ark. Code Ann. §§ 16-112-201–16-112-208 (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.