

ARKANSAS SUPREME COURT

No. CR 07-983

HAROLD EDWARD CHISM
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered February 14, 2008

PRO SE MOTION FOR
RECONSIDERATION OF DISMISSAL
OF APPEAL [CIRCUIT COURT OF
WASHINGTON COUNTY, CR 91-
413, HON. WILLIAM A. STOREY,
JUDGE]

MOTION DENIED.

PER CURIAM

Appellant Harold Edward Chism, an inmate in custody of the Arkansas Department of Correction in Jefferson County, filed a petition in Washington County Circuit Court seeking a writ of habeas corpus, which the circuit court denied and dismissed. Appellant filed a motion in the circuit court that sought reconsideration of the decision, which was also denied. Appellant lodged an appeal of the two orders in this court, and we dismissed the appeal. *Chism v. State*, CR 07-983 (Ark. Jan. 10, 2008) (per curiam). He now brings this motion for reconsideration of the dismissal of the appeal.

Appellant first contends that he was convicted prior to enactment of Act 1780 of 2001, and, because the “old law” in effect prior to Act 1780 was applicable, he should file his petition in the trial court.¹ Yet, we dismissed the appeal on the basis of the same law as was in effect prior to Act 1780. As our opinion noted, 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

¹ As noted in our prior decision, appellant did not invoke Act 1780, under which a petitioner who asserts actual innocence may make a motion for scientific testing of evidence.

the petition is filed pursuant to Act 1780 of 2001. *Lukach v. State*, 369 Ark. 475, ___ S.W.3d ___ (2007) (per curiam). Under what appellant references as the “old law,” Ark. Code Ann. § 16-112-105 (1987), required, and still requires, that the writ be made returnable to the circuit court of the county in which it may be served. Well prior to enactment of Act 1780, this court held that 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. See *Johnson v. McClure*, 228 Ark. 1081, 312 S.W.2d 347 (1958); *State v. Ballard*, 209 Ark. 397, 190 S.W.2d 522 (1945).

Appellant also argues that we may address his questions concerning jurisdiction at any time. Questions of subject-matter jurisdiction are always open and cannot be waived. *State v. Boyette*, 362 Ark. 27, 207 S.W.3d 488 (2005). But, while we may have subject-matter jurisdiction on those issues, we do not have jurisdiction to consider the merits of appellant’s petition, whether it raises questions concerning the jurisdiction of the trial court or not, because the trial court did not have personal jurisdiction to consider his petition for habeas relief. Because the trial court did not have jurisdiction to address the petition, this court also lacks jurisdiction to address an appeal. See *Lawrence v. City of Texarkana*, 364 Ark. 466, 221 S.W.3d 370 (2006). As we indicated in our prior opinion, without personal jurisdiction, the trial court cannot provide appellant relief, whether or not the petition has merit. Any remand would be pointless, and we may not reach the issues.

Appellant has stated no valid reason to revisit our previous decision on this issue. We therefore deny his motion for reconsideration.

Motion denied.