

# SUPREME COURT OF ARKANSAS

No. 11-491

MATTHEW W. BARNETT  
APPELLANT

V.

DANNY BURL, WARDEN  
APPELLEE

**Opinion Delivered** November 10, 2011

PRO SE APPELLANT'S MOTION TO  
FILE SUPPLEMENTAL REPLY BRIEF  
[LEE COUNTY CIRCUIT COURT, CV  
2011-47, HON. RICHARD L. PROCTOR,  
JUDGE]

APPEAL DISMISSED; MOTION  
MOOT.

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## PER CURIAM

On March 29, 2011, appellant Matthew W. Barnett, an inmate incarcerated in an Arkansas Department of Correction (ADC) facility 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.

Now before us is appellant's motion for leave to file a supplemental reply brief on appeal. After the motion was filed, appellant telephoned one of our staff attorneys to advise that he had been released from custody and was living in Pulaski County. He also faxed his new address to our clerk's office. The Records Office of the ADC has confirmed that appellant has indeed been released from custody.

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. *Smith v. Norris*, 2011 Ark. 331 (per curiam); *Jackson v. Norris*, 2011 Ark. 298 (per curiam); *Waller v. Norris*, 2011 Ark. 168 (per curiam); *Buckhanna v. Hobbs*, 2011 Ark. 119 (per curiam). 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. *Smith*, 2011 Ark. 331; *Jackson*, 2011 Ark. 298; *Waller*, 2011 Ark. 168; *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.<sup>1</sup> Appellant is no longer within the jurisdiction of the circuit court in which he filed his petition. 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. *Smith*, 2011 Ark. 331; *Jackson*, 2011 Ark. 298; *Waller*, 2011 Ark. 168; *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)). Even if appellant's petition had merit, and the circuit court erred in dismissing it, appellant cannot now prevail on appeal. *Smith*, 2011 Ark. 331; *Jackson*, 2011 Ark. 298; *Waller*, 2011 Ark. 168; *Buckhanna*, 2011 Ark. 119. Accordingly, the appeal is dismissed, and the motion is moot.

Appeal dismissed; motion moot.

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<sup>1</sup>There is an exception for petitioners claiming the right to be released on a writ of habeas corpus on the ground of actual innocence under Act 1780 of 2001, codified at Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006). Pursuant to Arkansas Code Annotated section 16-112-201(a), such petitions are filed in the court where the judgment of conviction was entered.