

**SUPREME COURT OF ARKANSAS**

No. CR 11-820

SIDNEY HARVEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** December 8, 2011

APPELLEE’S MOTIONS TO DISMISS APPEAL AND FOR BRIEF TIME [PULASKI COUNTY CIRCUIT COURT, CR 2003-1749, HON. BARRY SIMS, JUDGE]

MOTION TO DISMISS APPEAL GRANTED; MOTION FOR BRIEF TIME MOOT.

**PER CURIAM**

Appellant Sidney Harvey, an inmate incarcerated in the Arkansas Department of Correction, appeals an order that denied his petition for writ of habeas corpus. The appellee State has filed a motion to dismiss the appeal and a motion that seeks an extension of time in which to file its brief should the motion to dismiss be denied. We grant the motion to dismiss, and, because we dismiss the appeal, the motion for extension of time is moot.

In its motion, the State avers that appellant has not raised in the brief that he filed the only claim over which the circuit court in this case had jurisdiction. 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 sections 16-112-201 to -208 (Repl. 2006), in which case the petition is properly filed pursuant to Arkansas Code Annotated section 16-112-201(a) in the court where the judgment of conviction was entered. *Smith v. Norris*, 2011 Ark. 414



(per curiam). With the exception of Act 1780 petitions, the writ should be issued by a court that has personal jurisdiction over the defendant, because the writ is otherwise not returnable to the court issuing the writ. *Borum v. State*, 2011 Ark. 415 (per curiam). Because appellant was not incarcerated in Pulaski County, the county in which he filed his petition, the court could not grant relief on a habeas claim that was not viable under Act 1780.

Appellant's judgment of conviction was entered in Pulaski County Circuit Court, and that court, the court in which appellant filed his habeas petition, had jurisdiction to hear claims under the act. Appellant has not, as the State contends, referenced the act in his brief. In any case, the act is not applicable to the circumstances here, because appellant's petition failed to set forth a claim under the act.

In order to seek relief under Act 1780, a petitioner must comply with a number of requirements set forth in section 16-112-202, including a requirement that the "identity of the perpetrator was at issue during the investigation or prosecution of the offense being challenged." Ark. Code Ann. § 16-112-202(7); *Leaks v. State*, 371 Ark. 581, 268 S.W.3d 866 (2007) (per curiam); see also *Coleman v. State*, 2011 Ark. 308 (per curiam). The conviction that appellant challenged in his petition was for the offenses of kidnapping and rape. Appellant did not contest that he drove the victim from her home to his apartment or that he had sex with her; he only challenged whether the victim was willing. See *Harvey v. State*, CACR 04-739 (Ark. App. Apr. 27, 2005) (unpublished). Appellant does not have a viable claim for Act 1780 relief as to those offenses.

An appeal of the denial of postconviction relief, including an appeal from an order



Cite as 2011 Ark. 524

denying a petition for writ of habeas corpus under Act 1780, will not be permitted to go forward where it is clear that the appellant could not prevail. *Guy v. State*, 2011 Ark. 305 (per curiam); *see also Smith*, 2011 Ark. 414 (applying the same rule to an appeal from an order that denied a habeas petition not under Act 1780). It is clear that appellant cannot prevail. We accordingly grant the State's motion. The appeal is dismissed, and the State's motion for an extension of time is therefore moot.

Motion to dismiss appeal granted; motion for brief time moot.