

ARKANSAS SUPREME COURT

No. 11-61

TIMOTHY DAVIS
APPELLANT

v.

RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION
APPELLEE**Opinion Delivered** April 19, 2012PRO SE APPEAL FROM THE
LINCOLN COUNTY CIRCUIT COURT,
LCV 2010-96, HON. JODI RAINES
DENNIS, JUDGE

APPEAL DISMISSED.

PER CURIAM

In 2005, appellant Timothy Davis was found guilty by a jury of capital murder and kidnapping with a firearm enhancement. He was sentenced as a habitual offender to an aggregate term of life imprisonment without parole. We affirmed. *Davis v. State*, 365 Ark. 634, 232 S.W.3d 476 (2006).

In 2010, appellant filed a pro se petition for writ of habeas corpus in the Lincoln County Circuit Court, which was located in the county where he was incarcerated. The circuit court found no merit to the petition and dismissed it. Appellant brings this appeal from that order.

Any petition for writ of habeas corpus is properly addressed to the circuit court in the county in which the petitioner is held in custody, unless the petition is filed pursuant to Act 1780 of 2001. *Borum v. State*, 2011 Ark. 415 (per curiam). Arkansas Code Annotated section 16-112-105 requires that certain procedural requirements be met by a petitioner asking a court to issue a writ of habeas corpus. The writ must be directed to the person in whose custody the prisoner is detained. *Id.* Additionally, the writ should be issued by a court that has personal jurisdiction

over the defendant.

In the present matter, appellant was in the custody of the Arkansas Department of Correction at the Cummins Unit in Lincoln County when he filed the petition. Since that time, he has been transferred to the Maximum Security Unit in Jefferson County. As appellant's petition for writ of habeas corpus was not filed pursuant to Act 1780, he cannot seek relief until he files his petition in the Jefferson County Circuit Court. While the petition may have been initially filed within the circuit court's jurisdiction, and the circuit court may have retained subject-matter jurisdiction in this case, the circuit court no longer had personal jurisdiction to issue and make returnable a writ because petitioner was no longer incarcerated within the court's jurisdiction. *See Watts v. Norris*, 2009 Ark. 473 (per curiam); *see also Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam). In short, the writ could no longer be directed to a custodian with immediate physical custody of the prisoner to effect the release of the prisoner. *See Borum*, 2011 Ark. 415; *Watts*, 2009 Ark. 473; *see also State Dep't of Pub. Welfare v. Lipe*, 257 Ark. 1015, 521 S.W.2d 526 (1975); *Johnson v. McClure*, 228 Ark. 1081, 312 S.W.2d 347 (1958); *State v. Ballard*, 209 Ark. 397, 190 S.W.2d 522 (1945). Accordingly, we decline to address the merits of appellant's arguments and dismiss the appeal.

Appeal dismissed.