

SUPREME COURT OF ARKANSAS

No. CR 11-1064

JESSIE HILL

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 10, 2012

PRO SE MOTION TO COMPEL AND
PETITION FOR WRIT OF
MANDAMUS [GRANT COUNTY
CIRCUIT COURT, CR 95-38, HON.
CHRIS E WILLIAMS, JUDGE]

APPEAL DISMISSED; MOTION AND
PETITION MOOT.

PER CURIAM

Appellant Jessie Hill lodged in this court an appeal from the denial of his motion to vacate judgment under Act 1780 of 2001 Acts of Arkansas, as amended by Act 2250 of 2005 and codified as Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006). Appellant filed the motion in the trial court where he was convicted of capital murder, and, in the motion, he sought a hearing to establish a scientific predicate for a new trial, the production of a report for the results of latent-fingerprint analysis that appellant alleged that the State performed on a marble rolling pin, and additional testing of evidence from his trial. Appellant has now filed a motion to compel, in which he requests that this court order production of the same latent-print report, and a petition for writ of mandamus to the State Attorney General to enforce the order that he seeks in his motion. We dismiss the appeal, and the motion and petition are therefore moot.

An appeal of the denial of postconviction relief, including an appeal from an order 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. *Aaron v. State*, 2012 Ark. 125 (per curiam). It is clear that appellant cannot prevail, because his motion for relief under Act 1780 did not establish that appellant was entitled to seek relief under the Act or that the trial court could assume jurisdiction. The petition was therefore properly dismissed.

Appellant's motion alleged that analysis of the fingerprints taken from the rolling pin—which had been one of the murder weapons used—matched his codefendant, Demarcus Tatum, and another of the State's witnesses, Curtis Osborne. He alleged that the State withheld the report detailing this analysis. Appellant argued that this previously hidden information would support his assertion that DNA testing of various items taken as evidence during the investigation of the crime would exonerate him.

The evidence at appellant's trial established that Tatum and appellant—who at the time was a suspect in another crime—had discussed leaving Arkansas. They tried to borrow a car, and, instead, the owner of the car asked his cousin, Arbrady Moss, to drive them to the bus station in Camden. Tatum testified that, a short time after they left in the car, appellant struck Moss on the head with the rolling pin after Moss refused to comply with appellant's demand for the car. Moss fell into a ditch, was placed in the trunk of the car, and eventually was left on a trail after appellant again beat Moss, this time with a juice bottle. After the car broke down, the two sold it to a garage owner in Oklahoma and bought bus tickets to Kansas City. In Kansas City, the pair were apprehended at the bus station after they grabbed a woman in the parking lot, stabbed her, and took her purse and car keys. The jury found appellant guilty and sentenced him to life without parole. This court affirmed the judgment. *Hill v. State*, 325 Ark. 419, 931 S.W.2d

64 (1996).

Appellant has previously unsuccessfully sought testing under Act 1780. *See Hill v. State*, 2010 Ark. 102 (per curiam); *Hill v. State*, 2009 Ark. 196 (unpublished per curiam); *Hill v. State*, CR 05-834 (Ark. May 18, 2006) (unpublished per curiam). In those petitions, appellant also sought fingerprint and DNA testing. This court, in its three previous opinions, held that the initial petition that appellant filed did not identify any advances in technology that would support the testing requested, and the later petitions were also inadequate because the testing requested was available at the time of appellant's trial.

The Act, both as currently enacted and prior to the 2005 amendment, permits relief only if a petitioner presents a claim for scientific testing of evidence that was not available at the time of trial or if the scientific predicate for the claim could not have been discovered through the exercise of due diligence. *Aaron*, 2012 Ark. 125. DNA profiles have been admissible evidence in Arkansas since 1991. *Aaron v. State*, 2010 Ark. 249 (per curiam). Fingerprint analysis and DNA testing were available at the time of appellant's trial, and the scientific predicate—that those tests might connect another individual to the weapon or the crime scene—was not only discoverable, but known to defense counsel and utilized in appellant's defense.

Under the Act as applicable here, a circuit court does not have jurisdiction to consider a petition for relief filed under the Act if the petition is outside the thirty-six-month period set in section 16-112-202(10)(B) that establishes a presumption of untimeliness and the petition fails to establish one of the enumerated grounds for rebutting the presumption. *Wallace v. State*, 2011 Ark. 295 (per curiam). Appellant's request for testing was filed more than fifteen years after the

judgment was entered in his case. The Act required appellant to establish a rebuttal to the presumption arising from one of the five grounds listed in the statute. *Aaron*, 2010 Ark. 249. The grounds available under the statute are summarized as follows: (1) that the person was or is incompetent, and the incompetence contributed to the delay; (2) that the evidence to be tested is newly discovered; (3) that a manifest injustice would result not based solely upon the claimant's own assertion of innocence; (4) that a new method of technology that is substantially more probative than prior testing is available; or (5) good cause. Ark. Code Ann. § 16-112-202(10)(B).

Appellant apparently would establish one of these five grounds by the new claims of prosecutorial misconduct and other allegations that were included in his latest Act 1780 petition. The petition included some vague references to improved technology, mostly based upon appellant's position that the Arkansas Crime Laboratory now routinely performs tests that, while available prior to appellant's trial, required outsourcing and approval for additional funds necessary as a result. He does indicate that new tests can, based upon Y-chromosome testing, further exclude certain donors for samples that may not have previously provided conclusive results. This does not, however, establish how this newer testing would be more probative concerning the particular samples that the defense could have had tested but elected not to pursue prior to his trial; the samples did not produce inconclusive results because the samples were never tested.

The petition makes reference to what may be a new alibi witness and alludes to the allegedly withheld evidence of fingerprints that matched to other individuals found on the

murder weapon. Appellant did not provide any facts in support of his claim that evidence was withheld, providing only bare allegations of the misconduct and asserting that testimony by the Crime Lab personnel was perjured. Moreover, he did not explain how the new testimony or withheld evidence would significantly change the value of the requested testing so as to fit within a new defense theory not inconsistent with appellant's previous defense. Tatum and Osborne both would have had occasion to handle the rolling pin consistently with the prosecution's version of events, and appellant did not show how the existence of their prints on the murder weapon would exonerate him.¹ None of the circumstances appellant sets out, even if established, would constitute good cause for further testing or otherwise satisfy the statutory requirements.

Appellant's petition failed to establish the required rebuttal of the presumption of untimeliness and, therefore, failed to provide a basis for the trial court to assume jurisdiction under Act 1780. The trial court did not err in dismissing the petition, and appellant cannot prevail on appeal of the order denying relief.

Appeal dismissed; motion and petition moot.

¹The rolling pin was found in the trunk of the car that Tatum and appellant drove from Arkansas to Oklahoma, and it was taken into evidence there by the FBI. Osborne was the owner of the garage and bought the car. Although the identification of Tatum's print on the weapon may have somewhat furthered appellant's defense, it would not have exonerated him. Tatum could easily have handled the rolling pin at some point during the trip after the murder occurred, just as Osborne apparently did.