

SUPREME COURT OF ARKANSAS

No. 11-1227

HENDRYK T. WILENCEWICZ
APPELLANT

v.

RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION
APPELLEE

Opinion Delivered May 24, 2012

PRO SE MOTION TO FILE BELATED
APPEAL AND/OR MOTION FOR
RULE ON CLERK [JEFFERSON
COUNTY CIRCUIT COURT, CV 11-619,
HON. JODI RAINES DENNIS, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

Appellant, Hendryk T. Wilencewicz, an inmate incarcerated in the Arkansas Department of Correction (“ADC”), filed in Jefferson County Circuit Court a petition for writ of habeas corpus under Arkansas Code Annotated sections 16-112-101 to -123 (Repl. 2006). The circuit court denied the petition, and appellant lodged this appeal. Appellant filed a motion in which he seeks to file a reply brief that was tendered late. We need not address the merits of the motion because we dismiss the appeal, and the motion is moot.

An appeal from an order that denied a petition for postconviction relief, including a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Fudge v. Hobbs*, 2012 Ark. 80 (per curiam). Appellant cannot prevail on appeal because the Jefferson County Circuit Court can no longer provide the relief that he sought.

Although appellant was incarcerated in a facility there at the time that he filed his petition, appellant is no longer incarcerated in Jefferson County. A petition for the 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. *Davis v. Hobbs*, 2012 Ark. 167 (per curiam). Appellant's petition was not filed under Act 1780, and the public records of the ADC now confirm that appellant is incarcerated in a facility in Lee County.

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 v. Norris*, 2011 Ark. 414 (per curiam). When a prisoner who seeks habeas relief is transferred to a facility in a different county, the circuit court in the county where the prisoner was previously incarcerated no longer has jurisdiction to issue and make returnable a writ. *Davis*, 2012 Ark. 167. Although Jefferson County Circuit Court may have retained subject-matter jurisdiction, it does not retain personal jurisdiction over the person in whose custody the prisoner is detained, and an order by that court will not act to effect his release. *Id.* This court will dismiss an appeal of the denial of a petition for writ of habeas corpus where the appellant is no longer incarcerated in the county where his petition was filed because the court can no longer grant the relief sought. *Id.*; see also *Huffman v. Hobbs*, 2011 Ark. 417 (per curiam).

Appeal dismissed; motion moot.