

ARKANSAS SUPREME COURT

No. CR13-91

MARCUS W. FIELDS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 11, 2013

PRO SE APPELLANT'S MOTION FOR
EXTENSION OF TIME TO FILE
CORRECTED BRIEF [SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT, CR 11-29, HON. J.
MICHAEL FITZHUGH, JUDGE]APPEAL DISMISSED; MOTION
MOOT.**PER CURIAM**

In 2011, appellant Marcus W. Fields was found guilty of the rape of a seven-year-old child. He was sentenced as a habitual offender to a term of life imprisonment. We affirmed. *Fields v. State*, 2012 Ark. 353. Appellant subsequently filed here a pro se motion to file a belated petition for rehearing that was denied. *Fields v. State*, 2013 Ark. 117 (per curiam).

On December 6, 2012, appellant filed in the trial court a pro se petition for writ of habeas corpus, seeking DNA testing and a “voice stress test” to be performed on the victim. The petition was filed pursuant to Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006). Act 1780 of 2001, as amended by Act 2250 of 2005 and codified at Arkansas Code Annotated sections 16-112-201 to -208. Under the statute, a petition for writ of habeas corpus may be filed by a convicted defendant in the trial court based on certain claims concerning scientific evidence proving a person actually innocent of the offense for which he was convicted. *Strong v. State*, 2010 Ark. 181, 372 S.W. 3d 758 (per curiam); Ark. Code Ann. § 16-112-103(a)(1)

(Repl. 2006); Ark. Code Ann. § 16-112-201.

On January 4, 2013, appellant filed in the trial court a motion to dismiss the habeas petition. The trial court entered an order granting the motion on the same day the motion was filed. Despite the fact that the motion was granted, appellant filed a notice of appeal on January 22, 2013, in which he said that he was appealing to this court from the order of the trial court entered “January, 2013.” When the record-on-appeal was received here, it contained no order entered in January 2013 before the notice of appeal was filed except the January 4, 2013 order.¹ As a result, the appeal was lodged as an appeal from that order, and a briefing schedule was set for the appeal. Appellant did not file a pleading taking issue with the lodging of the record as an appeal from the January 4, 2013 order. Instead, he submitted a brief that was returned to him because it did not conform to the rules of this court. Now before us is appellant’s motion for an extension of time to file the corrected brief.

The appeal is dismissed, and the motion is moot. An appeal of the denial of postconviction relief, including an appeal from an order that pertained to a petition for writ of habeas corpus seeking scientific testing, will not be permitted to go forward where it is clear that the appellant could not prevail. *See Foster v. State*, 2013 Ark. 61 (per curiam).

Here, the only order in the record-on-appeal that corresponded to the notice of appeal filed by appellant on January 22, 2013, was the January 4, 2013 order that granted appellant’s motion to dismiss the habeas petition. With respect to that order, appellant received precisely

¹The record contains an order entered January 23, 2013, that denied appellant’s petition for rehearing of the denial of his petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011), but that order was filed after the notice of appeal was filed.

the relief that he sought. Accordingly, there was no ground for an appeal.

Appeal dismissed; motion moot.

Marcus W. Fields, pro se appellant.

No response.